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ALEXANDER L. STEVAS,
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No. 82-556

IN THE

Supreme Court of the United States

October Term, 1982

THE PRESS-ENTERPRISE COMPANY, a California Corporation,

Petitioner,

vs.

THE SUPERIOR COURT OF THE STATE OF CALIFORNIA, FOR THE COUNTY OF RIVERSIDE,

Respondent.

On Writ of Certiorari to the Court of Appeal of the State of California, Fourth Appellate District, Division Two.

JOINT APPENDIX.

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PETITION FOR CERTIORARI FILED SEPTEMBER 27, 1982.
CERTIORARI GRANTED JANUARY 24, 1983.

Parker & Son, Inc., Law Printers, Los Angeles. Phone 724-6622

JOINT APPENDIX

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FIRST DAY JURY TRIAL —
VIOLATION OF SECTIONS & CHARGES.

Superior Court of the State of California, County of Riverside.

TITLE: People vs. Albert Greenwood Brown, Jr., DATE & DEPT. 10-19-81 5. NUMBER: CR-18104.

COUNSEL: District Attorney by Robert *Spitzer*, Deputy Joseph Peter *Myers*. Thompson & Colegate by: James D. Ward.

REPORTER: William Beam.

PROCEEDING: First Day Jury Trial — Violation of Sections & Charges: 187PC (190.2(a)(17) Sub (iii)) P.C. (Count I). 261 Sub 2 & 32 P.C. (12022.8PC) (Count II).

PRIORS: 261 Sub 3 P.C., 261 Sub 3 P.C. (Defendant Status: CUSTODY).

(NOTED: Using one Court Reporters — running a daily transcript).

People represented as indicated and defendant present with counsel.

The PRESS ENTERPRISE, represented by Thompson and Colegate present a written MOTION RE: GENERAL PUBLIC SHOULD BE ADMITTED TO ALL PHASES of the jury voir dire. The motion is ordered filed, counsel argue the motion. The motion is denied and granted in part, as stated on the record.

The following motions by the defense, are received and ordered filed, counsel argue same:

MOTION RE: DISCOVERY DATA — Both counsel having reached an agreement, stated — SO ORDERED;

MOTION IN LIMINE TO EXCLUDE PHOTOGRAPHS' pursuant to 402 of the Evidence Code — DENIED, without prejudice;

MOTION TO PREVENT TRIAL ON ISSUES pursuant to 190.2(2)P.C. — DENIED, without prejudice;

MOTION RE: JURY SELECTION — FOR INCREASE IN NUMBER OF PEREMPTORY CHALLENGES — DENIED, reasons stated;

MOTION TO RESCUE THE DISTRICT ATTORNEY, and CHANGE OF VENUE — DENIED, without prejudice.

Jury venire having been summoned, are sworn to answer questions touching upon their qualifications as prospective jurors.

The Court reads the AMENDED INFORMATION to the prospective jurors.

The defendant has waived being present on this date, only — and is excused.

Counsel continue their jury voir dire.

The prospective jury is admonished and excused until 1:30 P.M., on 10-20-81 to which time trial of this matter is adjourned.

MORTLAND, Judge
Wight, Clerk

2nd DAY JURY TRIAL — VIOLATION OF SECTIONS & CHARGES.

Superior Court of the State of California, County of Riverside.

TITLE: People vs. Albert Greenwood, Jr., DATE & DEPT. 10-20-81 5, NUMBER: CR-18104.

COUNSEL: District Attorney by Robert *Spitzer*, Deputy Joseph Peter *Myers*.

REPORTER: William Beam.

PROCEEDING: 2nd Day Jury Trial — Violation of Sections & Charges: 187PC (190.2(a)(17) Sub (iii)) P.C. (Count I). 261 Sub 2 & 3 P.C. (12022.8PC) (Count II).

PRIORS: 261 Sub 3 P.C., 261 Sub 3 P.C. (Defendant Status: CUSTODY).

(NOTED: Using one Court Reporters — running a daily transcript).

People represented as indicated and defendant present with counsel.

Counsel resume jury voir dire.

Second panel of prospective jurors having been summoned, are sworn to answer questions touching upon their qualifications.

The Court reads the Amended Information.

Counsel continue with voir dire.

The prospective jurors are admonished and excused until 10-21-81 at 10:00 A.M., this department.

OUTSIDE THE HEARING OF THE PROSPECTIVE JURY:

The defendants admitts the priors, having withdrawn his denial.

The Court advised him of his rights, same waived and the admission is ordered entered.

Trial is adjourned until 10-21-81 at 9:30 A.M.

MORTLAND, Judge

Wight, Clerk

3rd DAY JURY TRIAL —
VIOLATION OF SECTIONS & CHARGES.

Superior Court of the State of California, County of Riverside.

TITLE: People vs. Albert Greenwood Brown, Jr., DATE & DEPT. 10-21-81 5, NUMBER: CR-18104.

COUNSEL: District Attorney by Robert *Spitzer*, Deputy Joseph Peter *Myers*.

REPORTER: William Beam and Dorothy Dawson.

PROCEEDING: 3rd Day Jury Trial — Violation of Sections & Charges: 187PC (190.2(a)(17) Sub (iii)) P.C. (Count I). 261 Sub 2 & 3 P.C. (12022.8PC) (Count II).

PRIORS: 261 Sub 3 P.C., 261 Sub 3 P.C. (Defendant Status: CUSTODY).

(NOTED: Using two Court Reporters — running a daily transcript).

People represented as indicated and defendant present with counsel.

All members of the jury voir dire are present and seated in the Court room.

The Court re-reads the Amended Information, and Caljic #2.90, list of the proposed witnesses.

OUTSIDE THE HEARING OF THE PROSPECTIVE JURY:

> The defendant admitts priors, the Court advises the defendant of the possible term to be served as to each prior.
>
> The admission is ordered entered.

AGAIN IN THE PRESENCE OF THE PROSPECTIVE JURY: Counsel resumes jury voir dire.

The jurors are admonished and excused until 10-22-81 at 10:00 A.M., this department.

MORTLAND, Judge
Wight, Clerk

4th DAY JURY TRIAL — VIOLATION OF SECTIONS & CHARGES.

Superior Court of the State of California, County of Riverside.

TITLE: People vs. Albert Greenwood Brown, Jr., DATE & DEPT. 10-22-81 5, NUMBER: CR-18104.

COUNSEL: District Attorney by Robert *Spitzer*, Deputy Joseph Peter *Myers*.

REPORTER: William Beam and Dorothy Dawson.

PROCEEDING: 4th Day Jury Trial — Violation of Sections & Charges: 187PC (190.2(a)(17) Sub (iii)) P.C. (Count I). 261 Sub 2 & 3 P.C. (12022.8PC) (Count II).

PRIORS: 261 Sub 3 P.C., 261 Sub 3 P.C. (Defendant Status: CUSTODY).

(NOTED: Using two Court Reporters — running a daily transcript)

People represented as indicated and defendant present with counsel.

The prospective jurors are present and seated in the court room.

Counsel resumes jury voir dire.

The jury is admonished and excused until 10-26-81 at 9:30 A.M., this department.

MORTLAND, Judge
Wight, Clerk

5th DAY JURY TRIAL — VIOLATION OF SECTIONS & CHARGES.

Superior Court of the State of California, County of Riverside.

TITLE: People vs. Albert Greenwood Brown, Jr., DATE & DEPT. 10-26-81 5, NUMBER: CR-18104.

COUNSEL: District Attorney by Robert *Spitzer*, Deputy Joseph Peter *Myers*.

REPORTER: William Beam and Dorothy Dawson.

PROCEEDING: 5th Day Jury Trial — Violation of Sections & Charges: 187PC (190.2(a)(17) Sub (iii)) P.C. (Count I). 261 Sub 2 & 3 P.C. (12022.8PC) (Count II).

PRIORS: 261 Sub 3 P.C., 261 Sub 3 P.C. (Defendant Status: CUSTODY).

(NOTED: Using two Court Reporters — running a daily transcript)

People represented as indicated and defendant present with counsel.

All prospective jurors are present and seated in the court room.

Counsel resumes jury voir dire.

All members of the prospective jury are admonished and excused until so ordered to return by telephone call by this Court and counsel to commence individual voir dire on 10-27-81 at 9:30 A.M.

OUTSIDE THE HEARING OF THE PROSPECTIVE JURY:

Court and counsel take up: Defense counsel's oral Motion In Limine Re: Photographs #1-a thru #1-34 of the victim and crime scene.

Counsel argue the motion.

IT IS ORDERED THAT: The Photographs marked Peoples' Exhibits #1-14, 1-15, 1-24 and 1-31 may be used to show the prospective jurors during their voir dire.

Trial of this matter is adjourned until 10-27-81 at 9:30 A.M., this department.

MORTLAND, Judge
Wight, Clerk

6th DAY JURY TRIAL — VIOLATION OF SECTIONS & CHARGES.

Superior Court of the State of California, County of Riverside.

TITLE: People vs. Albert Greenwood Brown, Jr., DATE & DEPT. 10-27-81 5, NUMBER: CR-18104.

COUNSEL: District Attorney by Robert *Spitzer*, Deputy Joseph Peter *Myers*

REPORTER: William Beam and Dorothy Dawson.

PROCEEDING: 6th Day Jury Trial — Violation of Sections & Charges: 187PC (190.2(a)(17) Sub (iii)) P.C. (Count I). 261 Sub 2 & 3 P.C. (12022.8PC) (Count II).

PRIORS: 261 Sub 3 P.C., 261 Sub 3 P.C. (Defendant Status: CUSTODY).

(NOTED: Using two Court Reporters — running a daily transcript)

People represented as indicated and defendant present with counsel.

Prospective jurors are present as required, and counsel resume jury selection.

Trial of this matter adjourned until 10-28-81 at 9:30 A.M.

MORTLAND, Judge
Wight, Clerk

7th DAY JURY TRIAL —
VIOLATION OF SECTIONS & CHARGES.

Superior Court of the State of California, County of Riverside.

TITLE: People vs. Albert Greenwood Brown, Jr., DATE & DEPT. 10-28-81 5, NUMBER: CR-18104.

COUNSEL: District Attorney by Robert *Spitzer*, Deputy Joseph Peter *Myers*

REPORTER: William Beam and Dorothy Dawson

PROCEEDING: 7th Day Jury Trial — Violation of Sections & Charges: 187PC (190.2(a)(17) Sub (iii)) P.C. (Count I). 261 Sub 2 & 3 P.C. (12022.8PC) (Count II).

PRIORS: 261 Sub 3 P.C., 261 Sub 3 P.C. (Defendant Status: CUSTODY)

(NOTED: Using two Court Reporters — running a daily transcript)

People represented as indicated and defendant present with counsel.

Counsel resume voir dire of each juror, individually.

Trial of this matter is adjourned until 9:30 A.M., 10-29-81, this department.

MORTLAND, Judge
Wight, Clerk

8th DAY JURY TRIAL — VIOLATION OF SECTIONS & CHARGES.

Superior Court of the State of California, County of Riverside.

TITLE: People vs. Albert Greenwood Brown, Jr., DATE & DEPT. 10-29-81 5, NUMBER: CR-18104.

COUNSEL: District Attorney by Robert *Spitzer*, Deputy Joseph Peter *Myers*

REPORTER: William Beam and Dorothy Dawson.

PROCEEDING: 8th Day Jury Trial — Violation of Sections & Charges: 187PC (190.2(a)(17) Sub (iii)) P.C. (Count I). 261 Sub 2 & 3 P.C. (12022.8PC) (Count II). PRIORS: 261 Sub 3 P.C., 261 Sub 3 P.C. (Defendant Status: CUSTODY)

(NOTED: Using two Court Reporters — running a daily transcript)

People represented as above and defendant present with counsel.

Counsel resume voir dire of each juror, individually.

Trial of this matter is adjourned until 11-2-81 at 9:30 A.M., this department.

MORTLAND, Judge
Wight, Clerk

9th DAY JURY TRIAL —
VIOLATION OF SECTIONS & CHARGES.

Superior Court of the State of California, County of Riverside.

TITLE: People vs. Albert Greenwood Brown, Jr., DATE & DEPT. 11-2-81 5, NUMBER: CR-18104.

COUNSEL: District Attorney by Robert *Spitzer*, Deputy Joseph Peter *Myers*.

REPORTER: William Beam and Dorothy Dawson

PROCEEDING: 9th Day Jury Trial — Violation of Sections & Charges: 187PC (190.2(a)(17) Sub (iii)) P.C. (Count I). 261 Sub 2 & 3 P.C. (12022.8PC) (Count II).

PRIORS: 261 Sub 3 P.C., 261 Sub 3 P.C. (Defendant Status: CUSTODY)

(NOTED: Using two Court Reporters — running a daily transcript)

People represented as indicated above and defendant present with counsel.

Counsel continue with jury voir dire.

Trial of this matter is adjourned until 11-3-81 at 9:30 A.M., this department.

Each juror was admonished as excused.

MORTLAND, Judge
Wight, Clerk

10th DAY JURY TRIAL —
VIOLATION OF SECTIONS & CHARGES.

Superior Court of the State of California, County of Riverside.

TITLE: People vs. Albert Greenwood Brown, Jr., DATE & DEPT. 11-3-81 5, NUMBER: CR-18104.

COUNSEL: District Attorney by Robert *Spitzer*, Deputy Joseph Peter *Myers*

REPORTER: William Beam and Dorothy Dawson

PROCEEDING: 10th Day Jury Trial — Violation of Sections & Charges: 187PC (190.2(a)(17) Sub (iii)) P.C. (Count I). 261 Sub 2 & 3 P.C. (12022.8PC) (Count II).

PRIORS: 261 Sub 3 P.C., 261 Sub 3 P.C. (Defendant Status: CUSTODY)

(NOTED: Using two Court Reporters — running a daily transcript)

People represented as indicated above and defendant present with counsel.

Counsel continues with individual voir dire.

Trial of this matter is adjourned until 11-4-81 at 10:00 A.M., department 5.

Each juror was admonished as excused.

MORTLAND, Judge
Wight, Clerk

11th DAY JURY TRIAL — VIOLATION OF SECTIONS & CHARGES.

Superior Court of the State of California, County of Riverside.

TITLE: People vs. Albert Greenwood Brown, Jr., DATE & DEPT. 11-4-81 5, NUMBER: CR-18104

COUNSEL: District Attorney by Robert *Spitzer*, Deputy Joseph Peter *Myers*

REPORTER: William Beam and Dorothy Dawson

PROCEEDING: 11th Day Jury Trial — Violation of Sections & Charges: 187PC (190.2(a)(17) Sub (iii)) P.C. (Count I). 261 Sub 2 & 3 P.C. (12022.8PC) (Count II).

PRIORS: 261 Sub 3 P.C., 261 Sub 3 P.C. (Defendant Status: CUSTODY)

(NOTED: Using two Court Reporters — running a daily transcript)

People represented as indicated and defendant present with counsel.

Counsel continues with individual voir dire.

Trial of this matter is adjourned until 11-9-81 at 9:30 A.M., this department.

Each juror was admonished as excused.

MORTLAND, Judge
Wight, Clerk

12th DAY JURY TRIAL —
VIOLATION OF SECTIONS & CHARGES.

Superior Court of the State of California, County of Riverside.

TITLE: People vs. Albert Greenwood Brown, Jr., DATE & DEPT. 11-9-81 5, NUMBER: CR-18104

COUNSEL: District Attorney by Robert *Spitzer*, Deputy Joseph Peter *Myers*

REPORTER: Barbara Krajec and Dorothy Dawson

PROCEEDING: 12th Day Jury Trial — Violation of Sections & Charges: 187PC (190.2(a)(17) Sub (iii)) P.C. (Count I). 261 Sub 2 & 3 P.C. (12022.8PC) (Count II).

PRIORS: 261 Sub 3 P.C., 261 Sub 3 P.C. (Defendant Status: CUSTODY)

(NOTED: Using two Court Reporters — running a daily transcript)

People represented as indicated and defendant present with counsel.

Counsel continues with individual voir dire.

The jurors, have each been admonished as they were excused.

Trial of this matter is adjourned until 11-10-81 at 9:30 A.M., this department.

MORTLAND, Judge
Wight, Clerk

13th DAY JURY TRIAL — VIOLATION OF SECTIONS & CHARGES.

Superior Court of the State of California, County of Riverside.

TITLE: People vs. Albert Greenwood Brown, Jr., DATE & DEPT. 11-10-81 5, NUMBER: CR-18104

COUNSEL: District Attorney by Robert *Spitzer*, Deputy Joseph Peter *Myers*

REPORTER: Barbara Krajec and Dorothy Dawson

PROCEEDING: 13th Day Jury Trial — Violation of Sections & Charges: 187PC (190.2(a)(17) Sub (iii)) P.C. (Count I). 261 Sub 2 & 3 P.C. (12022.8PC) (Count II).

PRIORS: 261 Sub 3 P.C., 261 Sub 3 P.C. (Defendant Status: CUSTODY)

(NOTED: Using two Court Reporters — running a daily transcript)

People represented as indicated and defendant present with counsel.

Counsel continues with individual voir dire.

Each juror is admonished as excused.

Trial of this matter is adjourned until 11-12-81 at 9:00 A.M., department 5.

MORTLAND, Judge
Wight, Clerk

14th DAY JURY TRIAL —
VIOLATION OF SECTIONS & CHARGES.

Superior Court of the State of California, County of Riverside.

TITLE: People vs. Albert Greenwood Brown, Jr., DATE & DEPT. 11-12-81 5, NUMBER: CR-18104

COUNSEL: District Attorney by Robert *Spitzer*, Deputy Joseph Peter *Myers*

REPORTER: Barbara Krajec and Dorothy Dawson

PROCEEDING: 14th Day Jury Trial — Violation of Sections & Charges: 187PC (190.2(a)(17) Sub (iii)) P.C. (Count I). 261 Sub 2 & 3 P.C. (12022.8PC) (Count II).

[redacted]RIORS: 261 Sub 3 P.C., 261 Sub 3 P.C. (Defendant [redacted]us: CUSTODY)

([redacted]TED: Using two Court Reporters — running a daily transcript)

People represented as indicated and defendant present with counsel.

Counsel continue with voir dire of the individual jurors.

Each juror admonished as excused.

Trial of this matter is adjourned until 11-16-81 at 9:30 A.M., department 5.

MORTLAND, Judge
Wight, Clerk

15th DAY JURY TRIAL —
VIOLATION OF SECTIONS & CHARGES.

Superior Court of the State of California, County of Riverside.

TITLE: People vs. Albert Greenwood Brown, Jr., DATE & DEPT. 11-16-81 5, NUMBER: CR-18104

COUNSEL: District Attorney by Robert *Spitzer*, Deputy Joseph Peter *Myers*

REPORTER: William Beam and Dorothy Dawson

PROCEEDING: 15th Day Jury Trial — Violation of Sections & Charges: 187PC (190.2(a)(17) Sub (iii)) P.C. (Count I). 261 Sub 2 & 3 P.C. (12022.8PC) (Count II).

PRIORS: 261 Sub 3 P.C., 261 Sub 3 P.C. (Defendant Status: CUSTODY)

(NOTED: Using two Court Reporters — running a daily transcript)

People represented as indicated and defendant present with counsel.

Counsel resume with jury voir dire of each juror, individually.

Each juror is admonished as they are excused.

Trial of this matter is adjourned until 11-17-81 at 9:30 A.M., this department.

MORTLAND, Judge
Wight, Clerk

16th DAY JURY TRIAL —
VIOLATION OF SECTIONS & CHARGES.

Superior Court of the State of California, County of Riverside.

TITLE: People vs. Albert Greenwood Brown, Jr., DATE & DEPT. 11-17-81 5, NUMBER: CR-18104

COUNSEL: District Attorney by Robert *Spitzer*, Deputy Joseph Peter *Myers*

REPORTER: William Beam and Dorothy Dawson

PROCEEDING: 16th Day Jury Trial — Violation of Sections & Charges: 187PC (190.2(a)(17) Sub (iii)) P.C. (Count I). 261 Sub 2 & 3 P.C. (12022.8PC) (Count II).

PRIORS: 261 Sub 3 P.C., 261 Sub 3 P.C. (Defendant Status: CUSTODY)

(NOTED: Using two Court Reporters — running a daily transcript)

People represented as indicated and defendant present with counsel.

Counsel resume with their individual voir dire.

Each juror is admonished and excused until further notice.

Trial of this matter is adjourned until 11-18-81 at 9:30 A.M., this department.

MORTLAND, Judge
Wight, Clerk

17th DAY JURY TRIAL —
VIOLATION OF SECTIONS & CHARGES.

Superior Court of the State of California, County of Riverside.

TITLE: People vs. Albert Greenwood Brown, Jr., DATE & DEPT. 11-18-81 5, NUMBER: CR-18104

COUNSEL: District Attorney by Robert *Spitzer*, Deputy Joseph Peter *Myers*

REPORTER: William Beam and Dorothy Dawson

PROCEEDING: 17th Day Jury Trial — Violation of Sections & Charges: 187PC (190.2(a)(17) Sub (iii)) P.C. (Count I). 261 Sub 2 & 3 P.C. (12022.8PC) (Count II).

PRIORS: 261 Sub 3 P.C., 261 Sub 3 P.C. (Defendant Status: CUSTODY)

(NOTED: Using two Court Reporters — running a daily transcript)

People represented as indicated and defendant present with counsel.

Counsel resume voir dire of each juror, individually.

The jurors are admonished as they are excused to remain on call.

Trial of this matter is adjourned until 11-19-81 at 9:30 A.M., this department.

MORTLAND, Judge
Wight, Clerk

18th DAY JURY TRIAL —
VIOLATION OF SECTIONS & CHARGES.

Superior Court of the State of California, County of Riverside.

TITLE: People vs. Albert Greenwood Brown, Jr., DATE & DEPT. 11-19-81 5, NUMBER: CR-18104

COUNSEL: District Attorney by Robert *Spitzer*, Deputy Joseph Peter *Myers*

REPORTER: William Beam and Dorothy Dawson

PROCEEDING: 18th Day Jury Trial — Violation of Sections & Charges: 187PC (190.2(a)(17) Sub (iii)) P.C. (Count I). 261 Sub 2 & 3 P.C. (12022.8PC) (Count II).

PRIORS: 261 Sub 3 P.C., 261 Sub 3 P.C. (Defendant Status: CUSTODY)

(NOTED: Using two Court Reporters — running a daily transcript)

People represented as indicated and defendant present with counsel.

Counsel resume voir dire of each juror, individually.

The jurors are admonished as they are excused to remain on call.

Trial of this matter is adjourned until 11-23-81 at 9:30 A.M., this department.

MORTLAND, Judge
Wight, Clerk

19th DAY JURY TRIAL — VIOLATION OF SECTIONS & CHARGES.

Superior Court of the State of California, County of Riverside.

TITLE: People vs. Albert Greenwood Brown, Jr., DATE & DEPT. 11-23-81 5, NUMBER: CR-18104

COUNSEL: District Attorney by Robert *Spitzer*, Deputy Joseph Peter *Myers*

REPORTER: Tricia Avery and Dorothy Dawson

PROCEEDING: 19th Day Jury Trial — Violation of Sections & Charges: 187PC (190.2(a)(17) Sub (iii)) P.C. (Count I). 261 Sub 2 & 3 P.C. (12022.8PC) (Count II).

PRIORS: 261 Sub 3 P.C., 261 Sub 3 P.C. (Defendant Status: CUSTODY)

(NOTED: Using two Court Reporters — running a daily transcript)

People represented as indicated and defendant present with counsel.

Counsel resume voir dire of each juror, individually.

The jurors are admonished as they are excused.

The Court having summoned an additional jury venire, same are sworn to answer questions touching upon their qualifications.

The Court reads the AMENDED INFORMATION and the Caljic Instruction # 2.90.

The prospective jurors are admonished and excused to remain on call to be contacted by telephone during the individual voir dire.

Trial of this matter is adjourned until 11-24-81 at 9:30 A.M., this department

MORTLAND, Judge
Wight, Clerk

20th DAY JURY TRIAL —
VIOLATION OF SECTIONS & CHARGES.

Superior Court of the State of California, County of Riverside.

TITLE: People vs. Albert Greenwood Brown, Jr., DATE & DEPT. 11-24-81 5, NUMBER: CR-18104

COUNSEL: District Attorney by Robert *Spitzer*, Deputy Joseph Peter *Myers*

REPORTER: W. Beam and D. Dawson

PROCEEDING: 20th Day Jury Trial — Violation of Sections & Charges: 187PC (190.2(a)(17) Sub (iii)) P.C. (Count I). 261 Sub 2 & 3 P.C. (12022.8PC) (Count II).

PRIORS: 261 Sub 3 P.C., 261 Sub 3 P.C. (Defendant Status: CUSTODY)

(NOTED: Using two Court Reporters — running a daily transcript)

People represented as indicated and defendant is present with counsel.

Counsel resume voir dire of each juror, individually.

The jurors are admonished as they are excused to remain on call.

Trial of this matter is adjourned until 11-25-81 at 9:30 A.M., this department.

MORTLAND, Judge
Wight, Clerk

21st DAY JURY TRIAL —
VIOLATION OF SECTIONS & CHARGES.

Superior Court of the State of California, County of Riverside.

TITLE: People vs. Albert Greenwood Brown, Jr., DATE & DEPT. 11-25-81 5, NUMBER: CR-18104

COUNSEL: District Attorney by Robert *Spitzer*, Deputy Joseph Peter *Myers*

REPORTER: W. Beam and D. Dawson

PROCEEDING: 21st Day Jury Trial — Violation of Sections & Charges: 187PC (190.2(a)(17) Sub (iii)) P.C. (Count I). 261 Sub 2 & 3 P.C. (12022.8PC) (Count II).

PRIORS: 261 Sub 3 P.C., 261 Sub 3 P.C. (Defendant Status: CUSTODY)

(NOTED: Using two Court Reporters — running a daily transcript)

People represented as indicated and defendant is present with counsel.

Counsel resume voir dire of each juror, individually.

The jurors are admonished as they are excused to remain on call.

Trial of this matter is adjourned until 11-30-81 at 9:30 A.M., this department.

MORTLAND, Judge
Wight, Clerk

22nd DAY JURY TRIAL —
VIOLATION OF SECTIONS & CHARGES.

Superior Court of the State of California, County of Riverside.

TITLE: People vs. Albert Greenwood Brown, Jr., DATE & DEPT. 11-30-81 5, NUMBER: CR-18104

COUNSEL: District Attorney by Robert *Spitzer*, Deputy Joseph Peter *Myers*

REPORTER: William Beam and Tricia Avery

PROCEEDING: 22nd Day Jury Trial — Violation of Sections & Charges: 187PC (190.2(a)(17) Sub (iii)) P.C. (Count I). 261 Sub 2 & 3 P.C. (12022.8PC) (Count II).

PRIORS: 261 Sub 3 P.C., 261 Sub 3 P.C. (Defendant Status: CUSTODY)

(NOTED: Using two Court Reporters — running a daily transcript)

People represented as indicated and defendant present with counsel.

Counsel resume voir dire of each juror, individually.

The jurors are admonished as they are excused to remain on call.

Trial of this matter is adjourned until 12-1-81 at 1:30 P.M., this department.

MORTLAND, Judge
Wight, Clerk

23rd DAY JURY TRIAL —
VIOLATION OF SECTIONS & CHARGES.

Superior Court of the State of California, County of Riverside.

TITLE: People vs. Albert Greenwood Brown, Jr., DATE & DEPT. 12-1-81 5, NUMBER: CR-18104

COUNSEL: District Attorney by Robert *Spitzer*, Deputy Joseph Peter *Myers*

REPORTER: William Beam and Tricia Avery

PROCEEDING: 23rd Day Jury Trial — Violation of Sections & Charges: 187PC (190.2(a)(17) Sub (iii)) P.C. (Count I). 261 Sub 2 & 3 P.C. (12022.8PC) (Count II).

PRIORS: 261 Sub 3 P.C., 261 Sub 3 P.C. (Defendant Status: CUSTODY)

(NOTED: Using two Court Reporters — running a daily transcript)

People represented as indicated and defendant present with counsel.

Counsel resume voir dire of each juror, individually.

Trial of this matter is adjourned until 12-2-81 at 9:30 A.M., this department.

MORTLAND, Judge
Wight, Clerk

24th DAY JURY TRIAL — VIOLATION OF SECTIONS & CHARGES.

Superior Court of the State of California, County of Riverside.

TITLE: People vs. Albert Greenwood Brown, Jr., DATE & DEPT. 12-2-81 5, NUMBER: CR-18104

COUNSEL: District Attorney by Robert *Spitzer*, Deputy Joseph Peter *Myers*

REPORTER: William Beam and Dorothy Dawson

PROCEEDING: 24th Day Jury Trial — Violation of Sections & Charges: 187PC (190.2(a)(17) Sub (iii)) P.C. (Count I). 261 Sub 2 & 3 P.C. (12022.8PC) (Count II).

PRIORS: 261 Sub 3 P.C., 261 Sub 3 P.C. (Defendant Status: CUSTODY)

(NOTED: Using two Court Reporters — running a daily transcript)

People represented as indicated and defendant present with counsel.

Counsel resume voir dire of each juror, individually.

People and defendant accept the jury.

*Court announces all jurors will be notified.

Court and counsel will resume with voir dire re: alternates.

Trial of this matter is adjourned until 12-3-81 at 9:30 A.M., this department.

MORTLAND, Judge
Wight, Clerk

25th DAY JURY TRIAL —
VIOLATION OF SECTIONS & CHARGES.

Superior Court of the State of California, County of Riverside.

TITLE: People vs. Albert Greenwood Brown, Jr., DATE & DEPT. 12-3-81 5, NUMBER: CR-18104

COUNSEL: District Attorney by Robert *Spitzer*, Deputy Joseph Peter *Myers*

REPORTER: William Beam and Dorothy Dawson

PROCEEDING: 25th Day Jury Trial — Violation of Sections & Charges: 187PC (190.2(a)(17) Sub (iii)) P.C. (Count I). 261 Sub 2 & 3 P.C. (12022.8PC) (Count II).

PRIORS: 261 Sub 3 P.C., 261 Sub 3 P.C. (Defendant Status: CUSTODY)

(NOTED: Using two Court Reporters — running a daily transcript)

People represented as represented as indicated and defendant present with counsel.

Jury selection is resumed. Both sides accept the jury.

Trial adjourned until 12-7-81 at 9:30 A.M.

MORTLAND, Judge
Wight, Clerk

26th DAY JURY TRIAL —
VIOLATION OF SECTIONS & CHARGES.

Superior Court of the State of California, County of Riverside.

TITLE: People vs. Albert Greenwood Brown, Jr., DATE & DEPT. 12-7-81 5, NUMBER: CR-18104

COUNSEL: District Attorney by Robert *Spitzer*, Deputy Joseph Peter *Myers*

REPORTER: Dorothy Dawson and Tricia Avery

PROCEEDING: 26th Day Jury Trial — Violation of Sections & Charges: 187PC (190.2(a)(17) Sub (iii)) P.C. (Count I). 261 Sub 2 & 3 P.C. (12022.8PC) (Count II).

PRIORS: 261 Sub 3 P.C., 261 Sub 3 P.C. (Defendant Status: CUSTODY)

(NOTED: Using two Court Reporters — running a daily transcript)

People represented as indicated and defendant present with counsel.

Counsel resumes jury selection.

Court is adjourned until 12-8-81 at 9:30 A.M.

MORTLAND, Judge
Wight, Clerk

27th DAY JURY TRIAL —
VIOLATION OF SECTIONS & CHARGES.

Superior Court of the State of California, County of Riverside.

TITLE: People vs. Albert Greenwood Brown, Jr., DATE & DEPT. 12-8-81 5, NUMBER: CR-18104

COUNSEL: District Attorney by Robert *Spitzer*, Deputy Joseph Peter *Myers*

REPORTER: Dorothy Dawson and Tricia Avery

PROCEEDING: 27th Day Jury Trial — Violation of Sections & Charges: 187PC (190.2(a)(17) Sub (iii)) P.C. (Count I). 261 Sub 2 & 3 P.C. (12022.8PC) (Count II).

PRIORS: 261 Sub 3 P.C., 261 Sub 3 P.C. (Defendant Status: CUSTODY)

(NOTED: Using two Court Reporters — running a daily transcript)

People represented as indicated and defendant present with counsel.

Counsel resumes jury selection.

The original daily transcript is ordered sealed.

Court is adjourned until 12-9-81 at 9:30 A.M.

MORTLAND, Judge
Wight, Clerk

28th DAY JURY TRIAL —
VIOLATION OF SECTIONS & CHARGES.

Superior Court of the State of California, County of Riverside.

TITLE: People vs. Albert Greenwood Brown, Jr., DATE & DEPT: 12-9-81 5, NUMBER: CR-18104

COUNSEL: District Attorney by Robert *Spitzer*, Deputy Joseph Peter *Myers*

REPORTER: Dorothy Dawson and Tricia Avery

PROCEEDING: 28th Day Jury Trial — Violation of Sections & Charges: 187PC (190.2(a)(17) Sub (iii)) P.C. (Count I). 261 Sub 2 & 3 P.C. (12022.8PC) (Count II).

PRIORS: 261 Sub 3 P.C., 261 Sub 3 P.C. (Defendant Status: CUSTODY)

(NOTED: Using two Court Reporters — running a daily transcript)

People represented as indicated and defendant present with counsel.

Counsel resumes jury selection.

Court is adjourned until 12-10-81, at 9:30 A.M.

MORTLAND, Judge
Wight, Clerk

29th DAY JURY TRIAL —
VIOLATION OF SECTIONS & CHARGES.

Superior Court of the State of California, County of Riverside.

TITLE: People vs. Albert Greenwood Brown, Jr., DATE & DEPT. 12-10-81 5, NUMBER: CR-18104

COUNSEL: District Attorney by Robert *Spitzer*, Deputy Joseph Peter *Myers*

REPORTER: Dorothy Dawson and Tricia Avery

PROCEEDING: 29th Day Jury Trial — Violation of Sections & Charges: 187PC (190.2(a)(17) Sub (iii)) P.C. (Count I). 261 Sub 2 & 3 P.C. (12022.8PC) (Count II).

PRIORS: 261 Sub 3 P.C., 261 Sub 3 P.C. (Defendant Status: CUSTODY)

(NOTED: Using two Court Reporters — running a daily transcript)

People represented as indicated and defendant present with counsel.

Counsel resumes jury selection.

Court is adjourned until 12-14-81, at 9:30 A.M.

MORTLAND, Judge
Wight, Clerk

30th DAY JURY TRIAL —
— VIOLATION OF SECTIONS & CHARGES.

Superior Court of the State of California, County of Riverside.

TITLE: People vs. Albert Greenwood Brown, Jr., DATE & DEPT. 12-14-81 5, NUMBER: CR-18104

COUNSEL: District Attorney by Robert *Spitzer*, Deputy Joseph Peter *Myers*

REPORTER: William Beam and Dorothy Dawson

PROCEEDING: 30th Day Jury Trial — Violation of Sections & Charges: 187PC (190.2(a)(17) Sub (iii)) P.C. (Count I). 261 Sub 2 & 3 P.C. (12022.8PC) (Count II).

PRIORS: 261 Sub 3 P.C., 261 Sub 3 P.C. (Defendant Status: CUSTODY)

(NOTED: Using two Court Reporters — running a daily transcript)

People represented as indicated and defendant present with counsel.

counsel resumes jury selection.

Court is adjourned until 12-15-81 at 9:30 A.M.

MORTLAND, Judge
Wight, Clerk

31st DAY JURY TRIAL — VIOLATION OF SECTIONS & CHARGES.

Superior Court of the State of California, County of Riverside.

TITLE: People vs. Albert Greenwood Brown, Jr., DATE & DEPT. 12-15-81 5, NUMBER: CR-18104

COUNSEL: District Attorney by Robert *Spitzer*, Deputy Joseph Peter *Myers*

REPORTER: William Beam and Dorothy Dawson

PROCEEDING: 31st Day Jury Trial — Violation of Sections & Charges: 187PC (190.2(a)(17) Sub (iii)) P.C. (Count I). 261 Sub 2 & 3 P.C. (12022.8PC) (Count II).

PRIORS: 261 Sub 3 P.C., 261 Sub 3 P.C. (Defendant Status: CUSTODY)

(NOTED: Using two Court Reporters — running a daily transcript)

People represented as indicated and defendant present with counsel.

Counsel resume with jury selection.

People and defense accept the jury and the alternates as indicated.

The Court orders that the jurors be summoned and sworn as trial jurors on 1-4-82 at 9:30 A.M.

Trial is adjourned until 12-30-81 at 9:30 A.M., both counsel having orally waived time for notice of hearing of Motions for that date.

All remaining prospective jurors to be notified to report to the jury assembly room for further instructions.

Trial adjourned until 12-30-81 at 9:30 A.M.

MORTLAND, Judge
Wight, Clerk

32nd DAY JURY TRIAL —
VIOLATION OF SECTIONS & CHARGES.

Superior Court of the State of California, County of Riverside.

TITLE: People vs. Albert Greenwood Brown, Jr., DATE & DEPT. 12-30-81 5, NUMBER: CR-18104

COUNSEL: District Attorney by Robert *Spitzer*, Deputy Joseph Peter *Myers*. Thompson & Colegate by: James D. Ward, (Press)

REPORTER: W. Beam and T. Avery

PROCEEDING: 32nd Day Jury Trial — Violation of Sections and Charges: 187PC (190.2(a)(17) Sub (iii)) P.C. (Count I). 261 Sub 2 & 3 P.C. (12022.8PC) (Count II).

PRIORS: 261 Sub 3 P.C., 261 Sub 3 P.C. (Defendant Status: CUSTODY)

(NOTED: Using two Court Reporters — running a daily transcript)

People represented as indicated and defendant present with counsel. OURSIDE THE HEARING OF THE JURY: Counsel for the PRESS-ENTERPRISE COMPANY present and moves to file MOTION FOR RELEASE OF TRANSCRIPT OF VOIR DIRE PROCEEDINGS & COURT ORDERS RE PRELIMINARY EVIDENTIARY MOTIONS OF ALBERT GREENWOOD BROWN — same ordered filed.

Motion argued and denied without prejudice.

Letter from Joseph Peter Myers dated 12-16-81 ordered filed, copy of same to be provided to counsel for the PRESS-ENTERPRISE.

Defendants' MOTION IN LIMINE TO LIMIT THE SCOPE OF EXAMINATION WITNESSES-Defendants'

MOTION TO EXCLUDE EVIDENCE (402 hearings) are received, and ordered filed, argued by counsel and DENIED with the exception of the portion (A Beagle Motion) that is GRANTED.

The motion to allow press coverage during the trial — submitted.

Trial of this matter is adjourned until 1-4-82 at 9:30 A.M.

SUBSEQUENTLY THE COURT SIGNS THE FORM: As Follows:

CONSENT FOR EXTENDED MEDIA COVERAGE

I hereby give my consent for the media recording or broadcasting of trial court proceedings in this criminal case by the use of still cameras, provingin the operation thereof is quiet and unobtrusive.

Signed: J. WILLIAM MORTLAND, Judge of the Superior Court County of Riverside.

(/) Copies to D.A. & J. Myers

MORTLAND, Judge
Wight, Clerk

MINUTE ORDER DENYING EX-PARTE APPLICATION TO RELEASE TRANSCRIPT OF THE VOIR DIRE PROCEEDINGS.

Superior Court of the State of California, County of Riverside.

TITLE: People vs. Albert G. Brown, Jr., DATE & DEPT. 2-23-82 5, NUMBER: CR-18104

COUNSEL: District Atty: R. Spitzer, J.P. Myers, Thompson & Colegate for Press Enterprise Co. by: J. *Ward*

REPORTER: NONE

PROCEEDING: Minute Order denying Ex-Parte Application to Release Transcript of the Voir Dire Proceedings

The Ex Parte application of the Press Enterprise Company to release the transcript of the Voir Dire proceedings is denied, Application ordered filed.

The jurors were questioned in private relating to past experiences, and while most of the information is dull and boring, some of the jurors had some special experiences in sensitive areas that do not appear to be appropriate for public discussion.

MORTLAND, Judge
Wight (sf), Clerk

Original Information of District Attorney.

In the Superior Court of the State of California, in and for the County of Riverside.

The People of the State of California, Plaintiff, v. Albert Greenwood Brown, Jr., Defendant(s). No. CR. 18104.

Arraign: 1-19-81.

Filed: December 31, 1980.

COUNT I

The District Attorney of the County of Riverside hereby accuses ALBERT GREENWOOD BROWN, JR., of a violation of Section 187 of the Penal Code, a felony, in that on or about October 28, 1980, in the County of Riverside, State of California, he did wilfully, unlawfully, and with malice aforethought murder SUSAN LOUISE JORDAN, a human being.

The District Attorney of the County of Riverside further charges that before the commission of the offense hereinabove set forth in Count I of the Information, that the murder of SUSAN LOUISE JORDAN was committed by defendant(s) ALBERT GREENWOOD BROWN, JR., while the defendant(s) was engaged in the commission of the crime of RAPE in violation of Section 261 of the Penal Code, within the meaning of Penal Code Section 190.2(a)(17) (Subsection (iii)).

COUNT II

For a further and separate cause of action, being a different offense from but connected in its commission with the charge(s) set forth in Count(s) I hereof, the District Attorney of the County of Riverside hereby accuses ALBERT GREENWOOD BROWN, JR., of a violation of Section 261, Subdivision 2 and Subdivision 3 of the Penal Code, a felony, in that on or about October 28, 1980, in

the County of Riverside, State of California, he did wilfully and unlawfully have and accomplish an act of sexual intercourse with a female person, to wit, SUSAN LOUISE JORDAN, not his wife, where she resisted but her resistance was overcome by force and violence and where she was prevented from resisting by threats of great and immediate bodily harm accompanied by apparent power of execution.

FIRST PRIOR OFFENSE:

The District Attorney of the County of Riverside further charges that before the commission of the offense set forth in Count II of this Information that said defendant, ALBERT GREENWOOD BROWN, JR., was on or about April 18, 1978, in the Superior Court of the State of California, for the County of Riverside, convicted of the crime of FORCIBLE RAPE, a felony, in violation of 261, Subdivision 3 of the Penal Code Code, and that he did not remain free of prison custody for, and did commit an offense resulting in a felony conviction during, a period of ten years subsequent to the conclusion of said conviction, within the meaning of Penal Code Section 667.6, Subdivision (a).

SECOND PRIOR OFFENSE:

The District Attorney of the County of Riverside further charges that before the commission of the offenses set forth in Counts I and II of this Information that said defendant, ALBERT GREENWOOD BROWN, JR., was on or about April 18, 1978, in the Superior Court of the State of California, for the County of Riverside, convicted of the crime of FORCIBLE RAPE, a violent felony, in violation of Section 261, Subdivision 3 of the Penal Code, and that he then served a separate term in state prison for said offense(s), and that he did not remain free of prison custody for, and did commit an offense resulting in a felony conviction during, a period of ten years subsequent to the conclusion of

said term, within the meaning of Penal Code Section 667.5(a).

BYRON C. MORTON
District Attorney
By: /s/ Don R. Inskeep
DON R. INSKEEP, Chief
Deputy District Attorney

DRI:mp

Amended Information of District Attorney.

In the Superior Court of the State of California, in and for the County of Riverside.

The People of the State of California, Plaintiff, v. Albert Greenwood Brown, Jr., Defendant(s). No. CR. 18104.

Filed: October 5, 1981.

COUNT I

The District Attorney of the County of Riverside hereby accuses ALBERT GREENWOOD BROWN, JR., of a violation of Section 187 of the Penal Code, a felony, in that on or about October 28, 1980, in the County of Riverside, State of California, he did wilfully, unlawfully, and with malice aforethought murder SUSAN LOUISE JORDAN, a human being.

The District Attorney of the County of Riverside further charges that before the commission of the offense hereinabove set forth in Count I of the Amended Information, that the murder of SUSAN LOUISE JORDAN was committed by defendant(s) ALBERT GREENWOOD BROWN, JR., while the defendant(s) was engaged in the commission of, attempted commission of, and immediate flight after committing and attempting to commit the crime of RAPE in violation of Section 261 of the Penal Code, within the meaning of Penal Code Section 190.2(a)(17)(iii).

COUNT II

For a further and separate cause of action, being a different offense from but connected in its commission with the charge(s) set forth in Count(s) I hereof, the District Attorney of the County of Riverside hereby accuses ALBERT GREENWOOD BROWN, JR. of a violation of Section 261, Subdivision 2 and Subdivision 3 of the Penal Code, a felony, in that on or about October 28, 1980, in

the County of Riverside, State of California, he did wilfully and unlawfully have and accomplish an act of sexual intercourse with a female person, to wit, SUSAN LOUISE JORDAN, not his wife, where she resisted but her resistance was overcome by force and violence and where she was prevented from resisting by threats of great and immediate bodily harm accompanied by apparent power of execution.

The District Attorney of the County of Riverside further charges that during the commission of the above offense, the said defendant(s) ALBERT GREENWOOD BROWN, JR. inflicted great bodily injury upon SUSAN LOUISE JORDAN, within the meaning of Penal Code Section 12022.8.

FIRST PRIOR OFFENSE:

The District Attorney of the County of Riverside further charges that before the commission of the offense set forth in Count II of this Amended Information that said defendant, ALBERT GREENWOOD BROWN, JR., was on or about April 18, 1978, in the Superior Court of the State of California, for the County of Riverside, convicted of the crime of FORCIBLE RAPE, a felony, in violation of Section 261, Subdivision 3 of the Penal Code, and that he did not remain free of prison custody for, and did commit an offense resulting in a felony conviction during, a period of ten years subsequent to the conclusion of said term, within the meaning of Penal Code Section 667.6(a).

SECOND PRIOR OFFENSE:

The District Attorney of the County of Riverside further charges that before the commission of the offense set forth in Counts I and II of this Amended Information that said defendant, ALBERT GREENWOOD BROWN, JR., was on or about April 18, 1978, in the Superior Court of the State of California, for the County of Riverside, convicted

of the crime of FORCIBLE RAPE, a violent felony, in violation of Section 261, Subdivision 3 of the Penal Code, and that he then served a separate term in state prison for said offense(s), and that he did not remain free of prison custody for, and did commit an offense resulting in a felony conviction during, a period of ten years subsequent to the conclusion of said term, within the meaning of Penal Code Section 667.5(a).

BYRON C. MORTON
District Attorney
By: /s/ Robert G. Spitzer
ROBERT G. SPITZER.
Deputy District Attorney

RGS:cjo

Motion of Press-Enterprise Company Regarding Attendance at Voir Dire Examination.

Superior Court of the State of California, for the County of Riverside.

People of the State of California, Plaintiff, vs. Albert Greenwood Brown, Defendant. No. CR 18104.

Filed: October 19, 1981.

Petitioner herein is the PRESS ENTERPRISE COMPANY, a California corporation, which publishes newspapers known as The Press and the Enterprise in Riverside, California. Petitioner herein is not a party in these proceedings in the formal sense of the word, but through its representatives has been an observer of the proceedings prior to trial and has reported those proceedings through its newspapers.

Petitioner herein seeks to keep the voir dire examination of jurors and the entire jury selection process open to the public and subject to reporting by its newspapers. Petitioner believes, on the basis of statements made by the court in these proceedings, that the public nature of the voir dire examination and the openness of that initial portion of the trial may be imperiled. It is petitioner's understanding that the court intends on completing the voir dire examination of all jurors outside of the presence of the public and the press.

Petitioner believes it has standing in these proceedings to object to such procedures based upon cases from the California Appellate Court and the Supreme Court of the United States.

PETITIONER'S STANDING—THE PUBLIC INTEREST

In the landmark decision of *Richmond Newspapers, Inc. vs. Commonwealth of Virginia*, 100 Sup. Ct. 2814, Chief Justice Berger stated in unequivocal language, "we hold

that the right to attend criminal trials is implicit in the guarantees of the First Amendment; without the freedom to attend such trials, which people have exercised for centuries, important aspects of freedom of speech and of 'of the press could be eviscerated'. *Branzberg vs. Hayes*, 408 U.S. 681, 92 Sup.Ct. 2656."

Justice Berger, at another point in the opinion in the *Richmond Newspapers* case, declared specifically that media representatives enjoyed the same right to access to criminal trials as the public.

It has been established in California that under the common law and under our statutory law, trials are intended to be open to the public subject only to limited exceptions. *Kirstowsky vs. Superior Court of Sonoma County*, 143 Cal.App.2d 745.

Petitioners herein are, in short, attempting to assert what has been described as a "independent public interest in the enforcement of the Sixth Amendment guarantee of a public trial." *Gannett Co. vs. DePasquale*, 99 Sup.Ct. 2898. Members of the public at large, and particularly representatives of the media who have a direct and personal interest in participating in criminal trials as spectators. As such, they are appropriate parties to object to their exclusion from the trial. A criminal trial is a public event. *Craig vs. Harney*, 331 U.S. 367. The public has a right to be informed as to what occurs in its courts. *Estes vs. Texas*, 381 U.S. 532.

THE SIXTH AMENDMENT PROTECTS THE RIGHT OF THE PUBLIC TO ATTEND CRIMINAL TRIALS.

The Sixth Amendment provides that in all criminal prosecution the accused shall enjoy the right to a public trial. This provision of the Bill of Rights sprang from the deep-seated distrust of our forefathers of secret trials. The United States Supreme Court, in considering the *Richmond News-*

papers case cited above, and in the summer before the *Gannett Co. vs. De Pasquale* case, examined in depth the history of jury trials in England and America. It was the conclusion of the majority of the justices that the right to a public trial was not a right given simply to the accused, but was a right enjoyed in an unbroken tradition by the public for centuries under the Anglo-American judicial system.

In the *Kirstowsky* case cited above, the defendant requested the exclusion of the public from the trial and claimed that it was her right to waive her right to a public trial. The court held that that alone was not determinative of the issue in that the public had a right to attend the trial as well. In other words, it is established under our law that the defendant has a right to a public trial, but it is not established that the defendant has the right to a private trial.

The public's interest may be quite different from the interest of an individual defendant. The public interest is based on broad, societal functions such as the informing of the public enabling the victim and his family to satisfy themselves that justice has been done and promoting the appearance of justice. The protection of the public's interest cannot be entrusted to the defendant, and as in the *Richmond Newspapers* case, although the defendant may seek a closed trial, the rights of the people can transcend those of the defendant.

THE FIRST AMENDMENT PROTECTS THE RIGHT OF THE PUBLIC TO ATTEND CRIMINAL TRIALS.

It has been established that one of the major purposes of the First Amendment was to protect the free discussion of governmental affairs. *Mills vs. Alabama*, 384 U.S. 214; *Garrison vs. Louisiana*, 379 U.S. 64. The public has a right

to know what occurs in its courts. *Estes vs. Texas*, 381 U.S. 532.

Free speech does not simply entail the dissemination of information, but requires also the right to gather information. See *Branzburg vs. Hayes, supra*. In other words, unless the media is to gather the information, its right to disseminate it is meaningless.

> "A responsible press has always been regarded as the handmaiden of effective judicial administration, especially in the criminal field. Its function in this regard is documented by the impressive record of service over several centuries. The press does not simply publish information about trials, but guards against the miscarriage of justice by subjecting the police, prosecutors and judicial processes to extensive public scrutiny and criticism. This court has, therefore, been unwilling to place any direct limitations on the freedom traditionally exercised by the news media for 'what transpires in the courtroom is public property'."
> *Sheppard vs. Maxwell*, 384 U.S. 333.

PROTECTION OF THE DEFENDANT'S RIGHT TO A FAIR TRIAL DOES NOT REQUIRE THE EXCLUSION OF THE PUBLIC FROM THE VOIR DIRE EXAMINATION IN THIS CASE.

A number of the cases cited herein and others which have dealt with this subject acknowledge the right of the court to exercise control over the spectators and control over the proceedings in general. A number of the cases feel that the right of the public to observe trials is not unlimited. Reference is made in various ways to the limitations of the right of the public to attend trials and the circumstances under which the public can be excluded from portions of the proceedings. The questions in this area are not easy. The court herein apparently intends on excluding the public entirely

from the voir dire examination. It is believed by petitioner herein that the basis for such an exclusionary rule is the case of *Hovey vs. Superior Court of Alameda County*, 28 Cal.3d 1. The *Hovey* case establishes the procedures regarding "death qualification" of jurors. It requires that venire persons be interrogated regarding death qualification outside of the presence of other venire persons, the reasoning of the case being that listening to others being interrogated tends to have an influence on the jurors and the presence of other venire persons tends to intimidate the people under interrogation.

Petitioner herein finds no fault with the procedure set forth in the *Hovey* case. Petitioner suggests, however, that the court herein intends on going well beyond the admonitions of the *Hovey* case into an area of infringement of the rights of the public and the press set forth in the paragraphs above. Nowhere in the *Hovey* decision is it stated that the public or the press must be excluded from the voir dire for death qualification. The court in that case was concerned only with the influence of other prospective jurors upon the person being interrogated.

Further, in this case the court proposes to go beyond the sequestering of venire persons for the matter of death qualification and complete the voir dire totally in private.

The court in this case has elected a procedure far too drastic and far too violative of the basic rights to a public trial. Alternate, less drastic, procedures could be followed to protect the rights of the defendants while preserving the rights of the public. The cases set forth in the paragraphs above establishing the rights of the public and the press to attend the said criminal trials require the establishment of alternate procedures when dealing with the obvious right of the defendants to a fair trial.

The empanelment of the jury is the first of a series of actions which comprise the term "public trial." *People vs. Teitelbaum*, 163 Cal.App.2d 184. In a very real sense, the empanelment of the jury is the most important portion of the whole trial procedure. If we could conceive of a procedure whereby the jury was empaneled in secret and the rest of the trial was public, an observer from the outside would be forever suspicious that the system had been compromised or contaminated at the first and most important phase, namely, the selection of the trier of fact. It is imperative that the appearance of justice be maintained from the outset of the trial.

Petitioner herein respects and acknowledges the right of the defendants in this action and in all criminal actions to a fair trial and sympathizes with the position of the counsel, both prosecution and defense, in connection with the presentation of their respective cases. Petitioner is mindful of the burden and the obligation of the court in balancing the rights of the defendants and the rights of the public. Petitioner believes, however, that in the name of a fair trial for the defendants, long established rights of the public to access to the trial should not be set aside, even under the admonition of the *Hovey* case. All reasonable efforts should be made by this court to find an alternative method of empaneling the jury short of closure of that portion of the trial.

DATED: October 19, 1981.

THOMPSON & COLEGATE

By /s/ James D. Ward

JAMES D. WARD

A Professional Corporation.

Attorneys for Petitioner.

Motion of Press-Enterprise Company for Release of Transcript of Voir Dire Proceedings and Court Orders Re Preliminary Evidentiary Motions of Defendant, Albert Greenwood Brown.

Superior Court of the State of California, for the County of Riverside.

People of the State of California, Plaintiff, vs. Albert Greenwood Brown, Defendant. No: CR 18104.

Petitioner, PRESS-ENTERPRISE COMPANY, a California corporation, respectfully petitions this court for an order releasing the following court records:

1. The complete transcript of the voir dire proceedings covering the empanelment of the jury in the above entitled criminal action;

2. Release of all, heretofore suppressed court orders concerning evidentiary matters submitted to this court for rulings by PEOPLE OF THE STATE OF CALIFORNIA and defendant, ALBERT GREENWOOD BROWN.

The petition is made on the grounds that the public has an independent right to attend criminal trials, along with access to various court rulings concerning the evidence to be presented in this criminal action.

This petition and motion is based upon these moving papers, the points, authorities and argument submitted here and any other oral and documentary evidence presented at the time of the hearing in this matter, currently scheduled for hearing on Wednesday, December 30, 1981, in Department 5 of the above entitled court, located at 4050 Main Street, Riverside California.

STATEMENT OF FACTS

In the instant case, defendant, ALBERT GREENWOOD BROWN, is charged with first degree murder in the alleged strangulation of a teenage girl in the City of Riverside.

Certain evidentiary motions have been made by defendant, ALBERT GREENWOOD BROWN, to suppress the introduction of evidence at the time of trial. The case is currently set for trial, however, the court has not released to the public the court's ruling on the evidentiary motions.

Further, on or about October 19, 1981, petitioner herein made a motion to allow the public to attend the voir dire proceedings in the above entitled action. Under the decision of *Hovey vs. Superior Court*, and defendant's opposition, the court felt that voir dire proceedings should be closed with regard to the death qualifying issues.

It is understood that the court now intends to not release the transcript of the voir dire proceedings at the conclusion of the voir dire proceedings, and has not stated at which point in the trial or after the conclusion of the trial the transcript will be made available to the public.

It is on the above facts that the instant petition and motion is brought to this court.

DATED: December 28, 1981

THOMPSON & COLEGATE

BY: /s/ John A. Boyd
JOHN A. BOYD
Attorneys for Petitioner,
PRESS-ENTERPRISE
COMPANY

MEMORANDUM OF POINTS, AUTHORITIES AND ARGUMENT

Petitioner, PRESS-ENTERPRISE COMPANY, submits the following points, authorities and argument in support of its petition:

I

PETITIONER HAS STANDING TO SEEK THE RELEASE OF THE TRANSCRIPT AND ORDERS.

In the recent landmark decision of *Richmond Newspapers, Inc. vs. Virginia*, 488 U.S. 555, 100 S. Ct. 2814 (1980) stated this important right as follows.

> "We hold the right to attend criminal trials is implicit in the guarantees of the First Amendment; without the freedom to attend such trials, which people have exercised for centuries, the important aspects of speech and of 'of the press could be eviscerated' ". *Richmond Newspapers, Inc. vs. Virginia*, 488 U.S. 580, 100 S. Ct. 2829.

Therefore, petitioners have standing to seek relief in this court through this appearance.

II

BY SUPPRESSING THE RELEASE OF THE TRANSCRIPT AND ORDERS THIS COURT HAS EFFECTIVELY IMPOSED A "GAG" ORDER OVER THE PROCEEDINGS IN THE CRIMINAL ACTION.

It cannot be argued that the failure to release the transcript of the voir dire proceedings and the orders of this court on the evidentiary motions by the litigants has effectively and conclusively prevented the public from attending those aspects of this criminal trial. Further, this amounts to a type of "gag" order by prohibiting the dissemination of the information concerning the voir dire proceedings and those

evidentiary motions to the public through the parties or their counsel, as well as court personnel.

In a somewhat similar case, it was decided by the United States Supreme Court in the case of *Nebraska Press Association vs. Stuart*, 427 U.S. 539, 96 S. Ct. 2791 (1976). In the *Nebraska* case, the trial court in a murder case issued an order restraining the media from publishing or broadcasting the counts of confessions or admissions made by any of the accused or any facts strongly implicating the defendants until the jury was empaneled. The United States Supreme Court reversed the Nebraska Supreme Court, which had modified the trial court's order.

The Supreme Court cited numerous authorities and concluded there was a common theme in the free speech cases that dealt with "prior restraints":

> "The thread running through all these cases is that prior restraints on speech and publication are the most serious and the least tolerable infringement on First Amendment rights. A criminal penalty or a judgment in a defamation case is subject to the whole panoply of protections afforded by deferring the impact of the judgment until all avenues of appellate review have been exhausted. Only after judgment has become final, correct or otherwise, does the law sanctioned become fully operative.
>
> "A prior restraint by contrast and by definition is an irreversible sanction. If it can be said that a threat of criminal or civil sanctions after publication 'chills' speech, prior restraint 'freezes' it at least for a time.
>
> "The damage can be particularly great when prior restraint falls upon the communication of news and commentary on current events. Truthful reports of public judicial proceedings have been afforded special protection against subsequent punishment." *Nebraska Press Association vs. Stuart*, 427 U.S. 556.

The *Nebraska Court* went on to discuss possible alternatives of prior restraint:

> "Most of the alternatives to prior restraint and their circumstances were discussed with obvious approval in *Sheppard vs. Maxwell*, 384 U.S. 357-362, 16 L. Ed 2d 600, 86 S. Ct. 1507 (parallel citation omitted):
>
> (a) Change of trial venue to a place less exposed to the intense publicity it seemed eminante in Lincoln County;
>
> (b) Postponement of the trial to allow the public attention to subside;
>
> (c) Searching questioning of perspective jurors, as Mr. Chief Justice Marshall used in the Burr case to screen out those fixed opinions as to guilt or innocence;
>
> (d) The use of emphatic and clear instructions on the sworn duty of each juror to decide the issue only on evidence presented in open court. Sequestration of jurors is, of course, always available. Although that measure insulates jurors only after they are sworn, it also enhances the likelihood of dissipating the impact of pre-trial publicity and imphasizes the elements of the jurors oaths." *Nebraska Press Association vs. Stuart*, 427 U.S. at 563-564.

The *Nebraska Court* also discussed the argument that pre-trial publicity invariably resulted in an unfair trial as follows:

> "We have noted earlier that pre-trial publicity, even if pervasive and concentrated, cannot be regarded as leading automatically and in every kind of criminal case to an unfair trial. The deciding cases 'cannot be made to stand for the proposition that juror exposure to information about a state defendant's prior convictions or to news accounts of the crime with which he is charged alone presumptively deprives defendant of due process." *Murphy vs. Florida*, 421 U.S. at 799 (parallel citations omitted). Appellate evaluation as to the impact of publicity take into account what other

measures were used to mitigate the adverse effects of publicity. The more difficult perspective or predicative assessment that a trial judge must make also calls for a judgment as to whether other precautionary steps will suffice." *Nebraska Press Association vs. Stuart*, 427 U.S. at 565.

The Court went on to discuss whether or not an impartial jury could be selected:

"The record demonstrates as the Nebraska courts held, that there was indeed a risk that pre-trial news accounts, true or false, would have some adverse impact on the attitudes of those who might be called as jurors. On the record now before us it is not clear that further publicity, unchecked, would so distort the views of potential jurors that 12 could not be found, who would, under proper instruction, fullfill their sworn duty to render a just verdict exclusively on the evidence presented in open court. We cannot say on this record that alternatives to a prior restraint on petitioners would not have sufficiently mitigated the adverse effects of pre-trial publicity so as to make prior restraint unnecessary. Nor can we conclude that the restraining order actually entered would serve its intended purpose. Reasonable minds can have few doubts about the gravity of the evil pre-trial publicity can work, but the probability that it would do so here has not been demonstrated with the degree of certainty are cases on prior restraint required." *Nebraska Press Association vs. Stuart*, 427 U.S. at 568-569.

In the instant case, on the eve of trial, petitioners are asking that this court make clear the record involving the selection of the jurors and the admissibility of evidence that was obtained by law enforcement agencies with the purpose of prosecuting the defendant, for the public and secondarily, the press that serves the public.

III

ALTHOUGH NOT BINDING ON THIS COURT, IN THE SIMILAR FACTUAL SITUATION, DIVISION II OF THE FOURTH DISTRICT COURT OF APPEALS HELD THAT THE TRANSCRIPT MUST BE MADE AVAILABLE AT THE CONCLUSION OF THE VOIR DIRE PROCEEDINGS.

In another pending criminal case, People of the State of California vs. George Wayne Smith, Christopher Gregory Harven, and Russell Aaron Harven, San Diego Superior Court Number CRN 6940, formerly of Riverside Superior Court Number CR 17751, the Fourth District Court of Appeals, Division II on a Petition for Writ of Certiorari brought by the petitioners herein ordered that the transcript of voir dire proceedings must be made available at the conclusion of the voir dire proceedings. A copy of said order is attached hereto as Exhibit "A".

While the order was unpublished, it clearly sets the tone for the balance that must be achieved between the rights of the defendant and the independent rights of the public to attend the criminal trials.

CONCLUSION

This court is faced with the possibility of excluding from the public the basis decided from previous rulings of this court, for the introduction of the evidence against the defendant, as well as a transcript of the voir dire proceedings concerning the most important aspect of this case, that being the qualification of the jurors to decide the fate of one man's life, to some point in the future that is yet to be decided.

In a system of laws that govern men, the theme is to allow equal justice under the law. If the public is unable to hear that "equal justice under the law" has been provided, then how can such a system work? It is respectfully

submitted that the public has a right at the onset of a trial to complete disclosure concerning all pre-trial motions which will effect the admissibility of evidence to be presented at that trial. Further, the closure of the voir dire proceedings and the supposed purpose it serves, cannot be served any longer after that jury is empaneled.

Based upon the foregoing points, authorities and argument, it is respectfully submitted that this court grant petitioners relief, and release the transcript of the voir dire proceedings when the jury is empaneled, and release this court's earlier rulings concerning the defendant's motions to suppress evidence.

DATED: December 29, 1981

Respectfully submitted,
THOMPSON & COLEGATE
BY: /s/ James D. Ward
JAMES D. WARD
Attorneys for Petitioner,
PRESS-ENTERPRISE
COMPANY

EXHIBIT A

Court of Appeal — State of California, Fourth Appellate District, Division One.

The San Diego Union v. Superior Court etc., County of San Diego. 4 Civil No. 24896.

Press-Enterprise Co., vs. Superior Court etc., County of San Diego. 4 Civil No. 24897.

SUPERIOR COURT NO. CRN 6940

Filed: June 30, 1981.

THE COURT:

The petitions for writ of mandate have been read and considered along with lodged opposition. Provided the trial court permits transcription of the closed portions of the voir dire examination, to be released to the press and public when the public part of the trial begins, and further provided the trial is open to the public from the time the first witness is sworn, the trial court is acting within its discretion here. The petitions are denied without prejudice to applications for further relief should these conditions be violated.

/s/ Brown
Presiding Justice

Copies to: Gray, Gray, Ames & Frye-SD
Thompson & Colegate-Riv.
District Attorney-Riv.
District Attorney-SD
Superior Court-SD

Letter From Joseph Peter Myers, Regarding December 30, 1981, Motion.

[Letterhead]

Filed: December 30, 1981.

December 16, 1981

Hon. J. William Mortland
Judge of the Superior Court
Riverside County Courthouse
4050 Main Street
Riverside, California 92501
HAND DELIVERED

re: People vs. Albert Brown, Jr.

Dear Judge Mortland:

In an article appearing in this morning's edition of the Press-Enterprise, Mr. Bowman, the reporter, indicated that this Court's sealing of the transcripts of the voir dire in this matter might be lifted upon the initiation of the trial. I have not yet had the opportunity to research the matter, and, therefore, do not know the circumstances of the "appellate opinion" to which Mr. Bowman refers.

Because of the urgency of this problem, I am taking the liberty of writing this letter to the Court. I believe that this Court's Order sealing the transcripts must stand until and unless it is challenged and reversed in some manner. I had already indicated to Mr. Bowman that the public simply had no legitimate interest in the transcripts, and that publication of their contents would constitute an enormous invasion of the privacy of jurors and prospective jurors. These people simply had no choice in the matter. They were required to attend and answer the questions asked by the Court, the District Attorney and me. While they might choose themselves to reveal their lives to the press at some later time, it would be completely improper to allow the

press to seize upon this opportunity to broadcast personal and intimate details about which they were questioned.

Should such a challenge by the press occur in this Court, as I believe it may, it seems to me that proper parties to any hearing would include each of the persons interviewed — those who will be sitting as jurors or alternate jurors and those who were excused. It is their privacy which the press would seek to invade, and they must surely have standing before this Court to present their views. Accordingly, I believe that this Court may legitimately require notice to each of the persons interviewed, and service of any moving papers seeking to challenge the sealing of the transcripts upon such persons. Further, although the Court might feel inclined to allow the attorneys for the moving party to know the names of those persons, the provision of addresses or other data would seem a burden which the moving party ought to sustain.

Further, it seems to me that prospective jurors deserve representation in such a proceeding. I believe that it might be possible to order not only personal service of any moving papers on prospective jurors, but to require that the moving party reimburse or pay the cost of legal representation. It is, quite obviously, not an expense which the Court need bear.

Frankly, I fear that the Press-Enterprise article, if it can be interpreted as a claim that the confidentiality of the proceedings will be destroyed, may well create a serious problem for the parties to this proceeding. It seems to me that it may well cause a good deal of fear on the part of the jurors or their families, and might cause even more unwanted calls to Mrs. Hall by jurors stating that they will not now serve.

I will continue to research the legal aspects of this matter, and will seek some assistance from Mr. Spitzer in that effort.

Respectfully,

/s/ Joseph Peter Myers
JOSEPH PETER MYERS

JPM:moi

cc: Robert G. Spitzer

Ex Parte Application of Press Enterprise Company to Release the Transcript of the Voir Dire Proceedings.

People of the State of California, Plaintiff, vs. Albert Brown, Defendant. Case No: CR 18104.

Petitioner, PRESS-ENTERPRISE COMPANY, a California corporation, respectfully petitions this court for an order releasing the following:

1. The complete transcript of the voir dire proceedings covering the empanelment of the jury in the above entitled criminal action.

The petition is made on the grounds that the criminal trial has been completed, both the guilt and penalty phases and this court has on this day sentenced ALBERT GREENWOOD BROWN, the defendant in that action.

On December 30, 1981, petitioner made a similar motion, that the court at that time denied without prejudice the motion to release a transcript of the voir dire proceedings. (Please see attached as Exhibit "A" the transcript of the proceedings, p. 3989, 3990.

The instant application is made on the basis that since the criminal trial is over, no prejudice could exist at this time to the defendant since he has already been tried.

Said motion is made on this application and the attached exhibit and the points and authorities submitted herewith.

MEMORANDUM OF POINTS & AUTHORITIES

I

PETITIONER HAS STANDING TO SEEK THE RELEASE OF THE TRANSCRIPT AND ORDERS.

The case of *Richmond Newspapers, Inc. vs. Virginia*, 488 U.S. 555, 100 S. Ct. 2814 (1980) discussed the right of the public to attend trials.

"We hold the right to attend criminal trial is implicit in the guarantees of the First Amendment; without the freedom to attend such trials, which people have exercised for centuries, the important aspects of speech and of 'of the press could be eviscerated' ". *Richmond Newspapers, Inc. vs. Virginia*, 488 U.S. 580.

Therefore, the public has the right to attend criminal trials, and when they have been barred from the courtroom, should at a minimum, to protect those rights have access to the transcript.

DATED: February 22, 1982

THOMPSON & COLEGATE
BY: JAMES D. WARD
Attorneys for Petitioner

EXHIBIT A.

THE COURT: Yes.

MR. WARD: All right.

THE COURT: And the motion of the Press-Enterprise which has been received by the Court is received, ordered filed.

I don't know if we have any filing fee problems or not.

THE CLERK: I think we have overcome that, Your Honor.

THE COURT: Very good.

It's ordered filed and as part of the record.

The motion to conduct extended media coverage is received and ordered filed and as soon as the People have indicated they would consent and we will leave it up to them and hear what defendant decides after counsel has had an opportunity to interview him.

The defense motion in limine is received and ordered filed as of December the 28th, 1981, we will take up next. But on Mr. Ward's motion on behalf of the Press-Enterprise, and incidentally the request for extended coverage I deem it to be a clerical error, that it is addressed to this Court and not the Municipal Court, it indicates that I am the Judge, and so I assume it simply was an oversight that it has the Municipal Court name on it.

The motions at this stage of the proceedings is denied without prejudice.

I agree with much of what the defense counsel and People's counsel have said and I also, regardless of the public's right to know, I also feel that's rather difficult that by a person performing their civic duty as a prospective juror putting their private information as open to the public which I just think there is certain areas that the right to

privacy should prevail and a right to a fair trial should prevail and the right of the people to know, I think, should have some limitations and, so, at this stage, the motion to open up anything that's been ordered sealed, including, again, the individual sequestered voir dire proceedings is denied without prejudice.

MR. WARD: Thank you, Your Honor.

THE COURT: Thank you.

MR. MYERS: Thank you.

MR. SPITZER: Thank you, Your Honor.

THE COURT: We will take up, I will advise counsel of one thing that I presume we will probably have to take up when Mr. Reiss is available, Alternate Number 2, Mr. Brian Reiss called in several days ago, last week sometime. He has a new job that they want him to commence on January the 18th so he is requesting to be excused.

I have just made a note of it and we will take it up when he is available and act on it as might be appropriate.

Now, we will proceed to the motion in limine.

The motion in limine seeks to relate to all proffered testimony of the Department of Justice, to-wit, Faye Springer, regarding comparison of footprints. Testimony of the Department of Justice, including Faye Springer, relating to circumstantial evidence of blood or semen types.

Letter of Joseph Peter Myers Dated March 10, 1982.

[Letterhead]

March 10, 1982

Hon. J. William Mortland
Judge of the Superior Court
4050 Main Street
Riverside, California 92501

Re: PEOPLE vs. ALBERT G. BROWN, JR.
Case No. CR 18104

Dear Judge Mortland:

On Friday, February 25, 1982, I received a copy of your Minute Order of February 23, 1982, regarding the Ex Parte application of the Press Enterprise Company to release transcripts of the *voir dire* proceedings in the above matter. At the outset, I was appalled that the application was made on an Ex Parte basis. It should have been obvious to the attorneys for the applicant that other counsel had been involved in this matter for some time, and had stated positions for the record on numerous occasions regarding the subject of the application.

Again, counsel for the Press Enterprise Company chose not to provide any notice whatsoever to the persons whose right to privacy is most clearly at stake, namely, the jurors and prospective jurors who had no choice but to divulge their deepest feelings and secrets during the process of jury selection. In my view, it is an outrage that the attorneys for the Press Enterprise Company could be allowed to make such a motion without providing proper notice to those individuals and allowing the matter to be fully heard. Obviously, it is the intention of the Press Enterprise Company, through its counsel, to avoid the existence of any possible record of testimony or rational argument made specifically on behalf of members of the venire and, thus, to prevent

the appellate courts within this State and in the Federal system from fully considering the serious issues which are present.

The process of jury selection in this case, confirmed by my conference with various jurors after the verdict was rendered, amply demonstrated that individuals could not possibly have been as direct or open with us in revealing their true feelings and experiences if they felt that their statements would become a matter of public record. We would have been faced, had that been the situation, with far less honesty on the part of potential jurors in areas that were of extreme importance to the prosecution and defense. It would be hard to fault a lack of candor on the part of a prospective juror given the specter of revealing perhaps extremely embarrassing information to the public.

If the Court were to use an alternative method of deleting such information from the record, however, it would be impossible for appellate courts reviewing the record to determine whether or not claims of improper exclusion of potential jurors are proper. As the Court is surely aware, such claims of error in the process of jury selection are often the basis for reversal in trials where the presentation of evidence is conducted without error.

Although I am certainly in agreement with the denial of the application of the Press Enterprise Company to open the transcripts of the jury selection process, I had hoped that the Court would have taken the option of insisting that the real parties in interest be provided with adequate notice of that application and, themselves, provide the Court with the

true justification for rejecting the application. I am requesting that this letter be made a part of the record in this matter.

Respectfully,

/s/ Joseph Peter Myers
JOSEPH PETER MYERS

JPM:kdm

cc: Robert Spitzer, Esq.
Office of the District Attorney
James D. Ward, Esq.
Thompson & Colegate

Order Below.

The following orders have been omitted in printing this appendix because they appear in the appendix to the printed Petition for Certiorari:

(a) Order of Court of Appeal, State of California, Fourth Appellate District, Division Two of May 13, 1982

(b) Notice of Entry of Order Denying Hearing in the Supreme Court of the State of California on June 30, 1982

Reporter's Partial Transcript of Oral Proceedings.

Superior Court of the State of California, for the County of Riverside.

People of the State of California, Plaintiff, vs. Albert Greenwood Brown, Jr., Defendant. No. CR-18104.

Before Hon. J. William Mortland, Judge, Dept. V, Monday, October 19, 1981.

APPEARANCES:

For the Plaintiff:

BYRON C. MORTON
District Attorney
4080 Lemon Street
Riverside, California 92501
BY: ROBERT G. SPITZER
Deputy District Attorney

For the Defendant:

JOSEPH PETER MYERS
Attorney at Law
4075 Main Street
Riverside, California 92501

Also Present:

THOMPSON & COLEGATE
Attorneys at Law
3737 Main Street, Suite 600
Riverside, CA 92501
BY: JAMES D. WARD

Reported By:

WILLIAM A. BEAM, C.S.R.
License No. 1354

[1] Riverside, California, Monday,
October 19, 1981, 10:03 A.M.

THE COURT: We will take the matter of the People vs. Albert Greenwood Brown, Jr., CR No. 18104.

It is noted that Mr. Brown is present with his counsel, People's counsel is present, and I have been presented with four motions.

I also note that the representative of the Press-Enterprise, and for anything that you might wish to put on the record, Mr. Ward, we will be happy to hear it.

MR. WARD: At this time, your Honor?

THE COURT: Yes.

MR. WARD: Your Honor, I do have a written motion.

THE COURT: And we will receive the response of respective counsel.

MR. WARD: All right. I have a written motion that I would like to submit, your Honor, I will just file those papers with the Court at the present time. I perhaps should set forth orally the position of my client, the Press-Enterprise in connection with this matter.

THE COURT: All right.

MR. WARD: Your Honor, it is our understanding that the Court intends on a basis of the *Hovey* decision to sequester the voir dire persons in connection with the interrogation of those persons regarding their death penalty qualifications. Now that, perhaps, is presumptious on our part, in that we do not know for sure what the Court's procedures are going to be, [2] but if the Court were to follow those procedures of Judge Hennigan or Judge McFarland, although they varied somewhat in the process that they used, we would have a problem with that procedure as we have with any problem where the public is excluded from the trial of the action.

I pointedly indicate, your Honor, that our objection is the exclusion of the public because we don't stand here simply

as the representative of the Press or a single newspaper, but we stand here representing the right of the public to attend all phases of the trial of the action itself.

It is our position, your Honor, that the public has an absolute right to attend the trial of the action and that it is further our contention that the trial of the action in that regard commences with the voir dire of the jury. We believe, in fact, in many ways that the selection of the jury is perhaps the most critical portion of the trial, because in the selection of the 12 or more, with some alternate persons who will try the case, therein lies the ultimate decision-making body that will determine the fate of the action. We think to exclude the public from that process is a serious violation of the rights of the public to access to the trial.

We believe and recognize the rights of defendants. We understand the position set forth by the Supreme Court in the *Hovey* decision, but we do not find any inconsistency with the public right of access to the trial and the rights of the defendant, even under the decision in *Hovey*.

It is our position, your Honor, that the Supreme [3] Court said that voir dire persons were to be sequestered, one from another, in connection with the questions regarding their opinions on capital punishment. There was no determination and no language in that opinion which said that the trial had to be closed. In fact, the Chief Justice made the remark that this procedure, which was referred to, the sequestering of the voir dire persons, one from another, would in no way restrict the openness of the trial of the action and that was a direct statement of the Chief Justice in connection with the opinion.

We believe, your Honor, that this is a problem that must be resolved. We have taken it up through the Supreme Court on two occasions before, and unfortunately they have not

as yet been willing to give us a hearing on the matter. We are at present preparing a petition for a writ of certiorari to the United States Supreme Court. Not only for the purpose of consistency do we arrive here again to address the issue, but because we feel that it is so important. We know that there are a number of capital cases coming up in this county and they are coming up all across the state. We feel there is possibility here of an erosion of rights. We feel that the possibility is that for the purposes of death qualifications of the jurors, the public would be excluded. The next easy step would be to exclude the public from all of the voir dire of the jury, such as was done in the San Diego case being handled by Judge Hennigan, where the jury was and is being interrogated in chambers.

We feel, your Honor, that it's an erosion of the very important right and one that we must repeatedly assert [4] to the Court. Of course, the cases that we stand on are set forth in our petition. We point, of course, most specifically to the Richmond newspaper case where the United States Supreme Court, through Chief Justice Berger, stated so clearly that under the Constitution the public does have a right to open trials.

I ask, therefore, that the Court consider its rulings in connection with the voir dire of the jury and we ask specifically that even following *Hovey* and the sequestering of voir dire persons, one from another, as to the death qualifications questions, that the whole process remain open to the public.

Now, you must consider, your Honor, the implications of that. We don't feel that in the long run, once this issue is resolved in our favor, that there is going to be any great clamor to cover the questioning of potential jurors in this or any other kind of case. It's a long and frankly dull process and we don't fear any great need to cover it at great public

involvement in the process, but the denial of the public involvement is a violation of the right that we fear so much.

If, either in and of itself or as a step to the future denial of the public's right to trial. And that is our position, your Honor, and if the Court has any questions as to our position, I would be happy to address them.

THE COURT: I have no questions. I think I understand your position. We will hear from counsel.

MR. MYERS: Yes, your Honor. Essentially, your Honor, [5] I think the Court is aware that our undertaking jury selection in this case may very well be as Mr. Ward states, one of the most important parts of the case itself. The fact that jury selection is important and the fact that it is, in fact, critical and deserves the attention of the appellate courts and trial courts in cases such as *Hovey* and *Witherspoon* and all the cases that have dealt with that process and the potential for abuse which may occur in that process, does not make it, simply stated, that part of the process a part of "the trial." I think the assumption that the petitioner Press-Enterprise makes in this case is that jury selection is the trial and is simply one part of the trial. Our position would be on a technical ground, your Honor, that that is simply not so.

The trial does not, in fact, commence until the jury has been sworn and generally a witness has been sworn. That is when it may be said that jeopardy attaches to a defendant. And I believe on that technical ground alone, the Court can refuse to grant the petition of the Press-Enterprise for public access to the jury selection process.

Mr. Ward makes some arguments that I think are most interesting and deserve some comment on our part. One is that even if the Court were to grant the motion or petition, that there would be no great clamor to cover the jury se-

lection in this or in any other capital case. In other words, what Mr. Ward is saying is that the Press will itself, somehow, by the judgment of the reporter or perhaps editor, makes its determination of whether it has interferred with this very difficult and important process of jury selection.

[6] He assures us that, well, the process is somewhat boring and therefore obviously it would not be terribly interesting for the reporter or for the readers of the news media, and I think, in fact, that he is right. The Court is faced with a balancing problem in this and other cases involving the First Amendment right of the public to know where freedom of the press and what is it that the public is supposed to know.

Mr. Ward's procedure or proposed procedure, I don't think the public has a legitimate interest in the deep feelings of individual prospective jurors about the death penalty, about the facts in this case or in any other, about their family situation. By being on a jury, I don't think people expose themselves to becoming public personalities. I don't think they place themselves or should in any way be seen as placing themselves in the position where their deep feelings can be found out by someone else, a neighbor reading the morning newspaper, unless they choose to discuss that situation with the newspaper after the process of jury selection is finally over.

It seems to me that by forcing people to have an extra shell about themselves during jury selection, knowing that a reporter is present in the room, such a prospective juror will not be able to provide the Court or counsel with the kind of candor that is required.

Since the recent decision allowing voir dire, even for the exercise of peremptory challenges, obviously prospective jurors can be questioned at even more in detail and in depth

about their most personal and private feelings. [7] It is one thing to sit as a juror in a case having revealed those feelings to a judge and to attorneys who presumably are not going to race out and discuss these with the Press or with any other person. It is quite another to know that a reporter is present or perhaps a photographer recording these particular feelings, and I think the natural inclination of anyone would be to refuse to divulge them, to refuse to be placed under a microscope or subject to public scrutiny, and, in effect, dissection.

I think an example of what can happen in these situations is shown in the recent case in Los Angeles involving a civil matter, the moving of the Los Angeles Rams. And the veritable circus of comment by counsel and comments by jurors that followed that case and its mistrial.

THE COURT: Do you mean the Rams or the Raiders?

MR. MYERS: The moving of the Raiders and the past and previous move of the Rams and all sorts of things indicating alleged problems in between.

But we there saw jurors, some of them tormented by the press, others delighted in accusing fellow jurors of misconduct in the course of that particular trial.

I don't think that's appropriate, and it certainly isn't beneficial either to the People or to the defendant in a case such as this. The balancing, it seems to me, of the First Amendment right to a free press and the right of a defendant to a fair trial has to weigh, I think in this instance, in favor of the defendant. Impairment of the jury selection process by the mere presence of the press would, I [8] am sure, occur, would prevent us from having a fair trial, and in this case, as we have now recently removed publications which are the subject of further motions before your Honor this morning.

In this case, especially that kind of presence of a member of the press, will, I think, curtail the ability of both counsel to try and assure even each of the separate parties to this action a fair trial, given a political climate, if you will, in this country of people justifiably concerned about crime. I think it would be very difficult for a juror who felt that he or she could be fair and hold to the presumption of innocence would not be over-ready to impose the penalty of death in a case such as this. It would expose that person to far too much danger in terms of their later relationships with perhaps friends and associates. The outside world in general.

Obviously, we therefore oppose the presence of the press during the jury selection process. It is obvious that once that process is completed, once there is a jury and once this trial has started, the public will be able to be present, members of the press will be able to be present, we will be able to undoubtedly comment upon the evidence that is adduced at the time of trial, perhaps the conduct of the attorneys, the rulings of the Court, whatever. The public is apparently going to want to know, or apparently be told it wants to know by the press and by the other media. I think very few people would be able to be selected as jurors in the presence of the kind of circumstances that the press can and occasionally [9] does involve itself in.

We are fortunate, I think, in our city of having a newspaper media that is generally a fair one, that rarely extends itself individually against criminal defendants or others that perhaps are targeted by it, but that does not mean that it will always be so. It does not mean that all of the other articles and stories that appear are accurate, because they are not. But they do not need to be present for jury selection. There is nothing the public needs to know about the intimate feelings of prospective jurors, although the defendant and

certainly the People's representative have that need to know what those innermost feelings may be.

Once a jury trial has started, and in fact, once we arrive at a point when it has concluded, then those inner feelings probably can be revealed to members of the press.

We deal with a very, very fragile process, it seems to me, one that has been subject to various, even kind of abuse that have led to serious problems in assuring defendants of having a fair trial.

The fact that we spend so much time in this, and I have, in this case, spent a good deal of time pointing out the difficulties of obtaining a fair jury, given the publicity on the pretrial basis which has already occurred in this case, that is, trying to have a jury that is insulated from the effect of what those jurors or prospective jurors have read and what opinions they formed and the like. All of that, I fear, would be destroyed by the fact that those people would not even, during the most intense sort of questioning, not in the mean [10] or attacking fashion, but under intense questioning as to what they really think and feel, that those people would be insulated from the news media at that time would be very wrong.

So we would submit, your Honor, that this Court should rule as the other judges of the Superior Court have ruled and obviously as they have been sustained on appeal by the petitioner, that despite the fact that the First Amendment exists, it is not necessary to open this trial to public scrutiny until there is, in fact, a trial and to leave the pretrial process of jury selection, as often with other pretrial motions, not subject to public scrutiny and view until these matters have been decided by the Court.

Thank you, your Honor.

THE COURT: Thank you, Mr. Myers.

Incidentally, have both counsel been provided with a copy of the motion of the Press?

MR. WARD: Your Honor, I am sorry, I failed to provide a copy to the District Attorney's Office.

MR. MYERS: I received my copy a few moments ago and the district attorney has now been provided with a copy.

MR. SPITZER: Just this moment, your Honor.

THE COURT: You may have some fees to pay to the clerk, I don't know, there may be some fees due if you wanted this filed.

MR. WARD: That's fine, your Honor, whatever is necessary. We also want a copy of the transcript, which I will give a copy of my card to the court reporter.

THE COURT: The motion is ordered filed subject to the [11] moving party making their peace with the clerk, if there is any peace to be made.

MR. WARD: Your Honor, that is fine. We would do that. If I could make one more point, I don't know whether the district attorney would want to address this or not, but I would have one remark in the way of closing.

THE COURT: All right. If the district attorney wants to go ahead and make some remarks, I am going to certainly give him the opportunity to present whatever he wants in regard to your motion.

MR. SPITZER: Well, your Honor, I have nothing really to present. As Mr. Ward first indicated in his remarks, perhaps this motion is somewhat presumptuous regarding what the procedure is going to be in this particular case. It's my understanding that we have not yet fully decided what that procedure will be and how it will be conducted.

THE COURT: We have not.

MR. SPITZER: The legal issue, I have not had an opportunity to research or resolve, obviously, the tenders on the question of whether or not jury selection is a pretrial matter or a part of the actual trial, and there is a distinction drawn by the United States Supreme Court in the Richmond Newspaper case, and then in the Gannit vs. DePasquale case, neither of which talk about the issues that are of concern here regarding jury selection.

I would just make one comment for the record, that it has been my observation in the last several trials I have had, that a portion of that trial, or the jury selection [12] in those trials has been a sequestration of individual jurors from not only other members of the venire, but also from the public as they discuss matters of personal concern to them. There is a very common question asked of jurors, whether or not they or any member of their family has ever been charged with a serious offense such as the defendant is currently charged with, or any serious offense or if they have ever been a victim of a violent or serious crime. And I know a number of judges in this court that I have tried cases in front of recently, although not your Honor, have insisted that the continuation of that line of questioning, after there is an affirmative response, be conducted in private, wherein people can explain in detail what their own personal lives have taught them about the case.

Therefore, I see this, as I say, not an uncommon kind of experience in the course of a criminal trial. I find it curious that it's only been addressed in a case such as this.

But I would submit the matter, your Honor.

THE COURT: All right. Mr. Ward?

MR. WARD: If I may say, as a technical matter, the commencement of the trial can we say is the date that the People file a complaint and the appellate cases have held

that the trial commences with the selection of the jury and that it was an integral part of the trial itself.

Further, I didn't mean to indicate that simply because a process could be boring and uninteresting, that it is necessarily relegated therefore to an unprotected portion [13] of the proceedings. We think on the contrary, that it is a most important part of the proceedings. As is the case of most trials, they are uninteresting and not covered, but occasionally the public has the right to be informed. I reemphasize that I don't stand here representing a newspaper or newspapers or the media. We stand here representing the public in a need when all of the people cannot attend a trial, just through the press and the other media that they must get their right to attend and get word of what has transpired, and it is the public's right that is at issue, and if the Court has not made a decision as to how the questioning of the prospective jurors is to be handled, I am delighted, because I hope then that the Court can take this into consideration. And I know Judge Matheney in Indio, or I am informed that Judge Matheney in Indio has sequestered the venire persons one from the other, but did not close the proceedings to the public, and that, in our view, is the only way that it can be handled in the light of *Hovey* and in the light of the right of the public to know.

You know, you talk about the public trial and what Mr. Myers' remarks are, they sound good, but to me, I am really worried about those remarks, because if you look at the instance and say that the people who are prospective jurors have the right not to have their views and their feelings aired in public, the same argument could be made regarding witnesses and regarding defendants. You either believe in the right of the public to attend trials and the free and open process of the search for the truth, or you don't believe in it. And the [14] minute you start making exceptions and

saying, well, you have this right where people's feelings are involved, you break down the entire process. The great need for openness in the pursuit of the truth is the important issue here, and long ago, hundreds of years ago we came to believe that subject to public scrutiny, people appearing in this almost sacred place of a courtroom, the truth was found out through openness and through the rights of everyone to attend and hear what was said, and if you erode that, we are greatly afraid of the result.

Now, we have had this unusual situation where the Chief Justice and with the Supreme Court of this state saying that qualifications is different in the way you ask questions, and suddenly this gives an opening for an erosion of what I feel is a very important right that we ask the Court not to do. And that's the end of our position, your Honor.

THE COURT: Thank you, Mr. Ward.

MR. MYERS: If I may make one brief response, your Honor?

THE COURT: All right.

MR. MYERS: What we perceive as happening in the question for openness is itself an erosion of the very thing that it is to be opened. That is, by opening up to the public scrutiny and particularly the scrutiny of the media which supposedly stands as a middleman or a conduit of "truth", by opening up that process, the process of selection, the process of obtaining true information as to the feelings of prospective jurors absolutely becomes, itself, perverted and eroded. That is why, when persons of government wish to advise the public of something, or test a theory, they quote "off the record" or [15] become "unnamed sources." That is why people do not want to be open to public scrutiny in this kind of situation. The communication media themselves

are well aware of the reluctance of persons to divulge their innermost thoughts, to be "on the record."

On the other hand, at certain times and under certain circumstances, and yet the needs of a defendant in a case such as this and, in fact, in this case are that these people not feel that they are "on the record" to anyone other than the judge, the counsel, the defendant and their own consciences. By opening up the process of selection and interview questioning in a private place, in what Mr. Ward correctly terms a sacred place, we destroy the very thing that supposedly is being reported up and is supposedly being preserved. The public right to know is, of course, very important, but the defendant's right to a fair trial where his life is at stake is, I think, more important. It is not easy for the courts to balance those rights, but I don't think there is any serious question as to which way the balance has to tip. The theory of the public's right to know what is happening in a criminal case is founded basically upon the abuse of soverign power that allows the State to prosecute persons in circumstances where the prosecution ought not to have occurred. And thus prevent public comment and public knowledge of abuse by the soverign himself. That is the foundation of the First Amendment right as it applies to criminal trials.

Unfortunately we live in a time when that is not so much the problem as the problem of preventing public [16] knowledge, public discourse, public indication of facts and circumstances surrounding the criminal trial, and public review of the innermost feelings of potential jurors from having those kinds of things prevent the defendant from having his opportunity to receive justice and to have a fair and impartial jury. As it is, our position again that despite the fact that there is a First Amendment and speaking as one who is another former member of the American Civil Liberties

Union, a founder of one chapter, which Mr. Spitzer undoubtedly joined while in law school, nevertheless, the case, given the needs of my client to a fair and impartial trial, that we cannot allow the process of jury selection to be opened up to public scrutiny.

Whatever happens during a trial, when there is the ability of the public to attend, whatever happens after the trial when jurors may or may not be interviewed as they see fit, that is something else. The jurors can, at that time, say, yes, I will tell you how I feel about this or how I feel about the case, or they can say, go away. But if the process is opened up where they have no choice but to sit and tell how they feel, and cannot, themselves, indicate to the newspaper, "Please go away, I don't want my neighbors to know how I feel about this, I don't want to admit to a newspaper reporter that I have feelings of racial prejudice that I can't put out of my mind through no fault of my own, or simply through upbringing, I don't want the newspaper to know that I don't think that this is the kind of crime that justifies the imposition of the death penalty when I have been through two wars and have seen so many more people killed under so many [17] different circumstances." Those are feelings that are private, they only become somewhat public or semi-public, and they only become relevant when a person, by mere chance, is brought before this Court with the possibility of serving as a prospective juror.

For that reason, in addition to the others expressed, that is, that the persons interviewed by us in this court would have no ability to themselves say to a representative of the media, "Go away." I feel we should continue the policy of this Court with regard to the sequestration of venire men and women, not only from each other, but from at this point in the trial, the world at large. We fear oftentimes it is the standard instruction that a judge gives to the jury at each

phase of the trial, whether it is a recess or an adjournment, they are not to talk about the case to anyone, they are not to form any opinion, they are not to do that for a very particular reason so it doesn't influence their own decision-making process. And yet, if we were to allow jury selection to occur under the circumstances suggested by Mr. Ward, we would already be in violation of that injunction of the Court.

So for all of these reasons, we would very much oppose the motion of the Press-Enterprise, whether it stands to benefit itself, whether it stands a representative of only itself, or whether it stands as a representative of the public at large.

Thank you.

THE COURT: My inclination would be, well, number one, [18] I think Mr. Brown is entitled to a fair trial, and we must do our utmost to see that he has a fair trial. The public's right to know should be respected and permitted so far as possible consistent with Mr. Brown's right to a fair trial. In this regard, I believe we need to decide how we are going to proceed.

With regard to general voir dire and with regard to the special voir dire which relates to the question of individual jurors' feelings with regard to the death penalty, my first inclination is that we should proceed with, number one, bring in a panel of about 50 jurors, proceed with excusing any and all jurors consistent with counsel's pleasure, who will not be able to serve or feel they will not be able to serve due to the time estimates that may be involved in this trial.

Thereafter I would be inclined to keep those that are able to serve present and to proceed with general voir dire. My inclination also would be to permit the public to be, or news

media representatives, to be present at such general voir dire. And the reason for this is because there will be questions by myself and questions by counsel that we would like all of the members of the panel to hear so that we don't have to repeat them individually.

And once the general procedure is completed as to that panel, then I would propose to have drawn in order by putting all the names of those that are eligible to serve in the jury selection box and put it in there and draw them out in an order so that thereafter we could keep the individual [19] voir dire with regard to the death penalty qualifications, so-called, and by calling them as we need them and letting them go about their usual ordinary affairs in the meantime. And I will hear from counsel as to your pleasure.

MR. MYERS: Mr. Spitzer is looking at me, your Honor, so perhaps I will begin.

The Court should have before it a document entitled "Motions Re Jury Selection and For Increase in the Number of Peremptory Challenges," which addresses, to a very brief extent, this particular portion —

THE COURT: I do have such before me.

MR. MYERS: — of the problem. Essentially we ask in that motion that the jury selection process, that is, the considerations dealing with the death penalty itself, be placed at a very minimal level on the prosecution because of the feelings toward the "death qualifications of jurors" that are present in the *Hovey* case. Essentially our position in that regard is that by going into great detail about persons who feel that while they have great reservations about the penalty itself, nevertheless they could be fair and impartial on the issue of guilt and innocence. But if the prosecutor is allowed to go into great detail in that regard, that he will then begin, which we also seek to limit, to systematically

exclude persons of a recognizable class, that is, people who can be fair and impartial on the issue of guilt, but have strong reservations or simply say they could not impose the death penalty under any circumstances. So we seek that limitation.

[20] As far as the Court's suggestion, that is, to have persons en masse time qualified, obviously I think that's very appropriate rather than having people wait about perhaps for many days or even weeks only to tell us that they don't have the time to be present for more days or weeks that the case may require. The difficulty of having any further voie dire and particularly in any further voir dire on that to public review is that while we might gain in some information from people who can remember questions and while the Court and counsel would not therefore have to repeat, perhaps a number of general questions, nevertheless, what we sacrifice in efficiency, perhaps we gain in having people able to tell us, not only there what we argue ought to be just minimal views or feelings about the death penalty, but the deeper feelings about issues in the case which are in themselves, given the nature of this case, very much an emotional question.

The other point that I would have is that if the public, through the newspapers and the other media, are permitted to be present during the voir dire of a "general nature," which may or may not, depending upon certain other motions, include the actual demonstration of certain items of evidence in the case and inquire as to feelings about them, namely, some, one that comes to mind immediately, is some rather terrifying, upsetting photographs to which I think counsel are both going to have to inquire depending on what the Court rules may or may not be used, that there will be deep feelings expressed as to the nature of the crime, there will be deep feelings expressed as to the locality. I had not

mentioned [21] this earlier, but one of the reasons for the motion for change of venue before your Honor in this case which we have had word from the Court of Appeal today which was, in fact, denied, in that form was not only that there was extensive pretrial publicity that referred by its more or less nature, as a city, as a geographic entity unto itself of the citizens that are uniquely aware of what is happening and uniquely involved in their feelings about criminal charges of conduct that occurs within this particular community. My feeling is therefore that having those people able to be subject to public scrutiny on their views in areas in the case not involving the death penalty, but nevertheless still the subject of a good deal of emotion and concern of those interviewed people, and the public, that that would again act as a damper or render it very difficult to get the true feeling of people about the aspect of the situation.

So that we would ask that jury selection, so far as time qualifications is concerned, be conducted in the manner in which your Honor has suggested. But that all of the rest of the jury selection process, all of the rest of voir dire be conducted privately.

I think, finally, that if we were to allow private voir dire only on the question of the death penalty and feelings about that penalty, I think, and yet have open to the public the remainder of the voir dire, we would subject persons to a good deal of scrutiny and, in effect, in terms of the exercise of challenges for cause or peremptory challenges that might be granted by the Court, that there would be a good [22] deal of public concern as to why did the district attorney and the Court excuse Juror No. 3 or why did the defense attorney and the Court happen to excuse Juror No. 5, Mrs. Jones?

Under those circumstances, I think there would be a good deal of speculation about what went on in the private voir

dire and the mere existence of that kind of speculation would, I think, cause there to be an interference with the willingness of jurors to give us their true feelings about any of these items of concern to us in this case.

So that we would object to any part of the general voir dire other than time qualifications of the jurors being open to the public in this particular case.

The further portions of the document before the Court deal with the necessity, and we believe, for an increase in the number of peremptory challenges occurs from the denial, at least to date, of our motion for change of venue and our belief that the reasons prompting that motion require us to seek a greater number of peremptory challenges in this matter.

As I had pointed out to the Court at the time the change of venue was first heard and tried to emphasize to the Court of Appeal, the fact that our survey indicates so much knowledge of the facts of this case on the part of people in the City of Riverside, from which the great bulk of venire will be selected, almost forces us, if we are correct in our assumption of what that means as far as people's true ability to be fair and impartial, almost forces us to exercise a peremptory challenge for any juror who is familiar with the articles or who has even read the articles in our local paper [23] that were the subject of the previous motion.

And, of course, the renewed motion by reason of the publication this past Saturday, the subject matter of the article about not only the case and its facts, but about Mr. Spitzer himself, so that's our view on the press itself.

If there were an area in which the Court might feel that the case should be extradited, it might very well be that a questionnaire could be quickly devised that would allow us basic information about these jurors such as their general

area of residence, their occupation, the occupation of their spouse, the number of children and that kind of data that we traditionally ask, and perhaps we can have those in a sense in written form for each of the jurors. It would give them something to do while they were waiting, if nothing else. And we can complete further inquiry that could very well save us a good deal of time, but beyond that, we would object to any opening of the voir dire in the manner the Court has suggested.

THE COURT: We will hear from you, Mr. Spitzer.

MR. SPITZER: Thank you, your Honor.

Does the Court wish me to address counsel's motion as well as the Court's proposal on procedure?

THE COURT: Yes, please.

MR. SPITZER: First, with respect to the procedure, your Honor, I don't know how many jurors are going to winnowed out of the original 50 simply because they can't afford to be away from work, or home, or other business, for the month or so that this case will take to try once the actual evidence begins to be presented.

[24] I would respectfully urge the Court to bring over, for time qualifications, more than 50. Maybe somewhere in the neighborhood of a hundred individuals, and from experience in the —

THE COURT: Excuse me. In that regard my intention for bringing over 50, and going through the time qualifications situation, keep whoever are available or could serve around, and bring over another 50 and go through the time qualifications. We would have a hundred called, and I would propose to try to go through that entire hundred and winnow out those that would be able to serve.

MR. SPITZER: That sounds like a reasonable approach, your Honor. It provides that from the hundred we can get a reasonable number of people who can serve.

With respect to the general voir dire of jurors, my understanding was that the Court indicated that that would be public and we would concur with that proposal, first of all, because the number of questions regarding simply the procedure, things like the presumption of innocence, the burden of proof, a number of aspects of the trial itself concerning pretrial publicity and things of that sort, I think can be asked of jurors as a whole, and from that inquiry, particularly as they listen to the responses of other jurors as is the case in most criminal trials, they then can respond to a vast number of questions on their ability to fair and impartial.

With respect to the remainder, we would proceed with individual voir dire as suggested in the *Hovey* decision.

I'm afraid I don't understand what the Court's [25] position was as to whether or not that should be private, that is, in chambers away from the public, or simply away from other jurors. Did the Court have any thoughts on that?

THE COURT: Yes. It will not be in chambers. I intend to use the courtroom. It is simply whether anybody other than those involved would be permitted to be within the courtroom. My tentative thoughts are that we would conduct the general voir dire with the media having access and that we would conduct the individual voir dire with regard to death qualifications and any other special areas that counsel may feel some problem with regard to, questioning them in the presence of the others with the Court having reserved jurisdiction to permit something further than death qualifications is on the individual basis, but the individual inquiry would be in private and not subject to scrutiny by the press or anybody else not involved.

MR. SPITZER: Okay. With that understanding, I would move on to the points made by counsel in his motion. He apparently makes three points, the first one he is asking for not only the right of the people to exclude persons from the jury who indicate they can be fair on the subject of the possible guilt of the defendant, but who would not impose the death penalty under any circumstances. That, of course, is contrary to the law in this state, both statutory and case law. He is asking the Court to ignore Penal Code Section 1074, subsection h, which allows a challenge for cause on individuals who entertain such conscious opinions as would preclude his finding of the defendant guilty, in which case he must neither [26] be committed nor compelled to serve as a juror when the offense is punishable by death, as is the charge against Mr. Brown here. It's also contrary to the decision in the *Hovey* case.

Essentially what Mr. Myers appears to be asking this Court to do, is to overrule the decision in *Hovey*, which was — in which the Court was asked to exclude people because they would — because of their death qualified nature be more likely to vote guilty in the guilt phase. *Hovey* found unpersuasive the voluminous evidence from psychologists and other statisticians that were presented in that case. Which would support that proposition and we don't have similar evidence here, but again I'd ask the Court to follow the law here and not try to make any new grounds, as Counsel seems to be suggesting.

Next he is asking for an order preventing the prosecution from questioning the potential jurors about their attitudes about the death penalty beyond the minimal inquiry that very fair men can be fair and impartial in determining his guilt or innocence. Exactly how he would prescribe the questioning is not clear, but I would suggest to the Court that that kind of prescription is improper under the Supreme

Court's recent decision in *People vs. Williams*, which Counsel alluded to earlier.

In the *Williams* case, the Supreme Court, pointed out for the Court's benefit, that is at 29 Cal 3d 392, the Supreme Court in that case indicated, your Honor, that the voir dire process is a significant one, not only insofar as it establishes grounds for cause, but also insofar as it [27] provides counsel with valuable information with which they can subsequently make peremptory challenges. To preclude the prosecution from asking questions about individual's attitudes as to the death penalty and other issues of concern in this particular case, would, I would suggest to the Court, prevent the prosecution from obtaining the same kind of information that presumably the defendant would be able to obtain concerning their attitudes, and thus inhibit the People's right to a fair trial in this case. It would be contrary, I would suggest, to the Supreme Court decision in *Williams*, and again unprecedented in the law in this State.

Again, Counsel seems to be asking this Court to break new ground, which is uncalled for here.

Finally, he is asking for an order granting the defendant 100 peremptory challenges based on the assumption that there has been extensive pretrial publicity which has affected the jurors. At this point in time, I am not certain that the record justifies that order, either. First of all, I would point out that the Penal Code does make provisions for additional peremptory challenges in a death penalty case such as we have here. Under 1070 of the Penal Code, the defendant is entitled to 26 peremptory challenges as are the People. That's 16 more than in a normal criminal trial. That the sample voir dire that we did approximately a month and a half or two months ago, the 25 jurors now indicate that the individuals have been substantial prejudiced by the pretrial publicity. I think of the 25 people who were interviewed

at length, only three individuals indicated that they had been so [28] prejudiced and indicated it very early on to the extent that they would not be allowed to sit by reason of cause, and there would be no need to exercise peremptory challenges.

And the significant number of jurors who indicated that they had become aware of the case through the press were skeptical of the information that they had received in the press and were hesitant, if not downright unwilling to try to prejudge the case based on the fragmentary and somewhat inaccurate reports they had read in the newspapers or heard on television.

At this point in time, absent a clear showing of substantial prejudice to the defendant, I see no legal ground to grant his request for this increased number of peremptory challenges.

With those remarks, People would submit it.

THE COURT: Thank you. I will hear any closing argument.

MR. MYERS: Yes, your Honor.

In case Mr. — in case the district attorney — well, strike that.

The legal basis for the motions that we have made in this matter, your Honor, is essentially a constitutional one and I think in terms of determining that a class of persons that can A, be fair and impartial on the question of guilt and innocence, but B, object to and would not impose the death penalty is such that we feel that is a cognizable group and essentially the authority that did not allow such a cognizable group to be excluded from a jury is provided by the United States Constitution on the Sixth Amendment, and also Article I, [29] Section 16 of the Constitution of our state.

There are discussions in various cases dealing with the exclusion of, quote, "cognizable groups," and I will refer the Court to the opinion is *Rubio vs. Superior Court* at 24 Cal. 3d 93 and 97, a 1979 case which establishes that there does exist the constitutional right not to have cognizable groups excluded. That is the most recent discussion of that issue, of which Counsel is aware, in our state and Justice Mosk apparently in that case requires what is called the two-prong test.

That is, number one, you determine that a group is a cognizable group if the members of that group share a common perspective. The common perspective here that we are talking about is the ability to be fair and impartial. But essentially on the application by that particular individual or group of individuals of the death penalty.

The second prong of that particular test is whether or not Justice Mosk indicates there is an alternative to having that group or members of that group possibly present on a jury. That is, is there an alternative to excluding those persons? I believe that is the difficulty that as Judge Hennigan in a case still being tried in San Diego County had to wrestle with and is what prompted that judge to essentially come up with a two-tier or two-jury system in the case, allowing such persons to sit on the guilt phase of the trial, but apparently excluding them from serving on the penalty phase of the trial.

In order to be consistent, of course, with the [30] defense position of this matter, we would contend that even excluding some persons from the penalty phase of the trial would be improper, given the nature of the exclusion of that cognizable group, thus preventing the jury from being a cross-section of the views of the community and at least those are the legal bases, your Honor, for our motion insofar

as we seek to limit questioning and to limit systematic exclusion of such persons.

I think both counsel are aware of the *Williams* decision which allows, in the ordinary case, both criminal and civil, questioning to be fairly detailed in order to permit the exercise of peremptory challenges, and the Court may well say that my position in this regard is somewhat inconsistent, in that we talk about the need for a full inquiry of the jurors and in all regular matters, yet at the same time to restrict inquiry in what may be an ultimate issue in this case at some time in the future.

Nevertheless, and regardless of the fact that the Court may perceive that as being an inconsistent position, that is our position and that is the motion that we make.

So far as an increase in the amount of jurors, I think it is simply obvious that the number of jurors that will be present who come from the City of Riverside and who have been exposed to the publicity in this case, against whom we would feel a peremptory challenge might certainly be necessary, is going to be far in excess of the number, that is, 26 authorized by Section 1070 of the Penal Code and even though it may appear that 26 is 13 more than the standard number or [31] 16 more than the standard number, and 13 more than the number in other similar felony cases, that is simply the charge of murder where I believe 13 peremptories are allowed.

Nevertheless, I think that that number is too few if the Court continues with its ruling that the matter ought not to be moved from this venue.

Thank you.

THE COURT: Thank you. The motion for an order limiting the right of the People with regard to jury selection is denied. The People are subject to the Appellate Court

decisions with regard to that, and I will make no further order than that they, of course, will be subject to complying with such positions as have been set forth. An order limiting the prospective questions to the jury is denied. The People may proceed with such questions as they deem appropriate.

For an order granting 100 peremptory challenges, it is denied as premature without prejudice. If additional peremptory challenges may be necessary, the Court will reserve jurisdiction to permit such if it appears appropriate.

I am going to take a 10-minute recess, or whatever is left between now and 11:15 and at that time we will hear the motion for discovery of any data in possession of the district attorney regarding prospective evidence, motion to prevent trial on issue of special circumstances, pretrial motion to exclude photographs from evidence. We will at least take these up when we resume at 11:15.

MR. MYERS: Thank you, your Honor. I think with respect to the motion as to discovery and the motion in limine [32] regarding the prospective evidence, chiefly the photographs, I think the district attorney and myself are in conformity and can advise the Court that we have essential agreement on those motions.

THE COURT: Very good. Thank you.

(Whereupon, court recessed at 11:08 a.m.)

(A brief recess.)

THE COURT: Okay, we will proceed as to the motion for discovery of any data in possession of the district attorney regarding the prospective jurors.

MR. SPITZER: Your Honor, I have discussed with Mr. Myers, there is very little information that the District Attorney's Office maintains regarding prospective jurors other than if they have previously sat on this poll, of their names, and if they have sat, the kind of case it was and if there

was a verdict, what the verdict was. I indicated to him that I would have no objection to providing him with that information.

I have read the *Murtashaw* case, that is, we would have no objection to that.

THE COURT: Okay, the motion is granted, such information as the District Attorney may have regarding any prospective jurors will be made available to the defense.

The motion to exclude photographs, what is the status on that at this time?

MR. SPITZER: Your Honor, there is, as is customary in these kinds of cases, a substantial number of photographs that were taken during the course of the investigation, a number of which the People will seek to introduce to illustrate certain. . . .

Reporter's Transcript.

In the Superior Court of the State of California, in and for the County of Riverside.

The People of the State of California, Plaintiff, vs. Albert Greenwood Brown, Jr., Defendant. No. CR-18107.

VOLUME 30, Pages 3966 to 4045.

Before THE HONORABLE J. WILLIAM MORTLAND, Judge. Department V, December 30, 1981.

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[3966] PROCEEDINGS OF WEDNESDAY, DECEMBER 30, 1981, 9:47 AM

THE COURT: It is noted that Mr. Brown is present with his counsel, People's counsel is present and we are

here to take up any and all further pre-trial matters in regard to the matter of Mr. Brown, CR 18104.

We have a motion of the Press-Enterprise for release of the transcript of voir dire proceedings and court orders re preliminary evidentiary matters on Defendant Albert Greenwood Brown and if counsel is ready, we will take that up.

MR. WARD: Your Honor, if I may?

THE COURT: You may.

MR. WARD: James D. Ward of Thompson & Colegate representing the Press-Enterprise, your Honor.

We set out our position in our motion but very briefly we were here here once before asking that the voir dire proceedings remain open to the public and that motion was denied.

We anticipated at that time that we would, upon the conclusion of those voir dire proceedings, be receiving a transcript thereof which as a second or third best thing to us, at least it gives us some availability of the proceedings and now we have been informed, or we understand that it is the intention of the Court to continue to retain those transcripts and to refuse Press access to those transcripts.

Our position today simply is to request that those transcripts and any other earlier proceeding transcripts thereof having been made, be made available to the Press for the [3967] purpose of examination.

The procedure arises from another case in which we became involved and while we recognize that the Court of Appeal ruling on that was a non-published opinion, it is not binding. We also feel that it was a good procedure that was established whereby if the Court were to close certain proceedings after the commencement of the trial, the transcript of those proceedings could be made available.

We did not feel that that is really adequate to give us the freedom of the Press and to allow the public to exercise it's rights as we see it. But certainly it is something that we would respectfully request at this time that the Court make those transcripts available to us.

(NO OMISSIONS)

[3968] THE COURT: We will hear from Counsel on it.

I do know that in the Harven, et al case which is CRN 6940 there was an Appellate Decision 4 CIV 24896 and 24897 in which Petitions for Writ of Mandate were read and considered with opposition, and they indicated provided the trial court permits transcripts of the posed portions of the voir dire examination to be released to the Press and public when the public part of the trial begins and further provided the trial is open to the public in the time the first witness is sworn the trial court is acting within its discretion here. The petitions are denied without prejudice for application for further relief should these conditions be violated.

So we will hear from counsel with respect to this.

MR. MYERS: Very well, your Honor.

THE COURT: I am concerned if I am required to make them open to the public that I should do so.

Most of them are of little moment. There are a few, however, in which some personal problems were discussed which could be somewhat sensitive as far as publication of those particular individuals' situations are concerned.

MR. MYERS: Your Honor, Joseph Myers appearing for the defendant.

The first thing that I would request in line with this motion of the Press-Enterprise Company is that my letter to the Court dated some weeks ago be made a part of the file in this action.

That letter represents to a very great extent my views on the subject of the confidentiality and essentially the [3969] right to privacy of all persons that were brought to this Court under the duress of our court system and the jury commissioner and brought to this courtroom to answer questions. They had no choice in whether or not they would fulfill their obligation to act as jurors. They had no choice in terms of whether or not they would be required to answer the questions of counsel regarding their qualifications and fitness to serve as jurors in this case. They had no choice but to answer those questions and they were required, inasmuch as they were under oath to tell the truth.

For one thing, as I pointed out in my letter, if this is the motion of the Press-Enterprise to reach into the transcripts of this Court have hitherto been filled then I believe the parties to this motion would include each and every person who was questioned by Mr. Spitzer and myself in these proceedings and also questioned by the Court because it is their right of privacy, it is the personal details of their lives, their feelings about sex and religion and politics and race and this case itself that are being sought.

It is my feeling, therefore, that this motion cannot even be heard at this time because the parties to this motion are not only the defendant who engages in voir dire of jury and prospective jurors to preserve his rights to a fair trial, nor is it only the District Attorney who seeks essentially the same thing, that is, a determination of who should and who should not sit on the jury, but the people who are most directly involved are, in fact, the people who we interviewed. And their rights to representation in this proceeding, it seems to me, [3970] are perhaps even paramount to those of the defendant and the prosecution.

I would say, first, that I don't believe in this case that there is a standing to have the motion heard at this time

without those persons being advised formally of the motion, or given the opportunity to be represented and, in fact, I believe that the Court can and should condition, if it chooses to hear this motion, any condition on the fact that notice and the provision of representation to those persons be provided by the Press-Enterprise Company.

It is the Press which seeks to go into their private lives in a situation where they had no choice but to answer questions, unlike their choice at the conclusion of this trial when a member of the Press might go to them and ask them about their lives and their feelings, and they could at that time comply and talk about the case or themselves, or choose not to and send the reporter packing.

So my feeling is that those people should be notified of this motion formally. They should be served with it, and they should be represented, and if they cannot afford representation then the Press should pay the cost of that representation.

Even though that is my suggestion, it is also my feeling that the fact that the motion might be served at this time could very well interfere with my client's right to a fair trial.

But, in any event, this motion should not be decided by this Court, it seems to me, or by any court without the people who are directly affected, that is, the prospective [3971] jurors and the actual jurors in this case being able to present their position.

In my letter and here and earlier times and during these proceedings, I have expressed the defense feeling about that, which is that these people are entitled to privacy, that, in fact, the voir dire is not the trial itself. It may be closed, and it may remain, it seems to me, closed.

I don't think the opinion of the Court of Appeal in the Harvin matter is binding on this Court obviously, but I don't even know if it's apposite to the questions before this Court. I don't know what order it was that Judge Hennigan originally made, whether the parties in that case consented to having the voir dire proceedings opened at some later time or released or unsealed. I simply am not aware of the issues that were before the Appellate Court in that case.

And if all parties in that situation had felt that they were not constrained to protect the privacy of the prospective jurors, then that is, indeed, a different case because that has been, I know, of great concern to me. It has been to the District Attorney, and I'm sure that it has been to the Court.

We had also in the course of these proceedings, not only by this form which is having each prospective juror interviewed singly as Hubby & Witherspoon require, but also in virtually direct assurance to the persons who were concerned that these proceedings were confidential.

And I can think of several of the people interviewed who are now on the jury who were concerned that what they were [3972] telling us about themselves was, in fact, confidential.

One woman I certainly recall said, "I couldn't say these things because there's a lady in the venire who knows my mother, and I would never want my mother to know about this situation.

And I'm sure the Court and counsel can recall numerous other incidents where very intimate details were presented.

There are things that we, Judge and two attorneys, may feel would not be particularly private to the persons that we interviewed, but again I think that that's their decision to make. If their feelings about religion, for example, which to all of us might same fairly innocuous or appropriate or

that there would be no harm caused by public review of those feelings, our feelings on that might be incorrect. We may have people who for one reason or other are very intense perhaps in their feelings that their religious opinions are their own business.

The same is true of politics which we inquired into. The same is true of sex. The same is true of their attitudes toward their husbands, wives, children, parents, their occupations and the like.

So our feeling is that the voir dire in this case was not open. It was not a part of the trial of this action. The trial will begin on Monday essentially when that jury is sworn, Mr. Spitzer makes his opening statement and perhaps a witness is sworn in this action. That is when certainly jeopardy will attach so far as my client is concerned. That is when the public will have a right unquestionably it seems to me to be in [3973] the courtroom listening to the evidence that is presented to the jury.

I can foresee possible motions during trial where the jury would be excluded and the public could be excluded as well.

(No Omissions)

[3974] Seven weeks or so is, in fact, confidential and should remain confidential in that although I am trying to do it in terms of the persons that we interviewed to present to the Court their rights, I believe that those people themselves, if the Court is to hear this motion or the Court is even inclined to grant it, that they have a right to be here to say, no, what I said was confidential. I thought it was confidential, I was assured it was confidential and I could never face my husband, wife, family, friends, whatever, if some of this information were to be public at this time.

And as I have indicated, these people had no right to tell us essentially I am not going to answer your questions. Although there were a few people, as I recall, who felt that they couldn't answer certain questions and there were some others who wondered why it was that we were asking them. But to now say that the press can rummage through the transcripts and find, perhaps, those things that are sensational about individuals obviously most of whom are not either jurors or alternate jurors in this case, would be completely inappropriate. It would be uncalled for and would surely be in violation of the constitutional right of privacy of these people.

When we learned that the press was interested in those transcripts, Mr. Spitzer having had a call and then I having received a call, Mr. Bowman said, well, what do you think would happen if we got to review the transcripts?

And I told him that it would be a field day for plaintiffs' lawyers in Riverside because that is unquestioned, [3975] at least in my mind, that the materials in those transcripts are not appropriate for public investigation and certainly not appropriate for publication and were they to be published, I think that in violation of privacy on the part of those prospective jurors at that time would cause, to say a multiplicity of actions would be understating, I think, the question.

However, in this proceeding I believe that the confidentiality of the voir dire can and should be maintained. I see no law that that confidential proceedings be opened, I know of no cases that indicate that it must be as the Press-Enterprise desires.

Secondly, if the Court feels that there is a question about that, both Mr. Spitzer and I have been handed the documents in support of the Press-Enterprise position only this morn-

ing, I would ask that we be given an opportunity to respond and even more that the persons that we interviewed, each and every one of them be given notice of this proceeding and the opportunity to be represented because it is their privacy that is sought to be invaded at this time and I just cannot imagine what public interest there is in the intimate details of lives of the jurors, the alternates and the persons that were excluded.

THE COURT: Now Mr. Spitzer, we will hear anything that you want to present.

MR. SPITZER: Thank you, Your Honor.

Your Honor, People in the form of the District Attorney's Office of this County would agree with the substance of the remarks made by Mr. Myers and the general thrust of his [3976] letter of December 16, 1981, to the effect that the Court's Order directing that the proceedings relating to the sequestered voir dire of the individual jurors remain sealed at least at this point in time.

I think one of the things that the Court has to recognize and I think the Court recognizes it and the attorneys recognize it, but perhaps the press does not, and that is that right now, particularly in this case and in cases that have been going on trial this year, the attorneys and the courts are operating under a set of rules which are, I believe, almost unique in this country and ones that have not existed in the law before.

There are a series of cases which the courts and counsel are aware beginning with the Hovey decision and then expanded again only this summer in the case of People vs. Williams, wherein the Supreme Court threw out a hundred years of case law dealing with the scope of questioning during the voir dire process.

Essentially, before this summer there was a limit to the kind of questions that attorneys could ask. They could only ask questions that related to challenges for cause. Now, under the decision in the Williams case, attorneys can ask any questions which might reasonably lead to an intelligent exercise of a peremptory challenge, a peremptory challenge being a challenge which needs no reason and rests solely within the discretion of the individual attorneys.

As a result of that, a large number of areas which were heretofore privileged and confidential and irrelevant in [3977] the examination of jurors suddenly were opened up to defense counsel and the Prosecution in the voir dire examination.

Issues of someone's religious faith, a part of it being of how that faith would relate to the issues in this case, suddenly were fair game. Issues of politics, how one voted, the secrecy of the ballotbox was suddenly opened up, perhaps.

In addition to that, large numbers of jurors, because of the particular nature of this case, chose to relate to us under either the implied or express promise of confidentiality, intimate details of their lives, which they thought might affect them in dealing with this kind of case.

We have a case here that is, I will suggest, substantially different than the kinds of cases that the Court and the Court of Appeals were confronted with in the case of People vs. Smith, Harven and Harven.

In that case, we are talking about a bank robbery and granted, the death penalty is involved, but the subject matter is basically a robbery and an escape and a shootout. All of which basically occurred in public view.

In this case, we are talking about a crime that did not really occur in public view, it occurred in the secrecy of an

orange grove without witnesses. One which involved not only the homicide and the killing of Susan Jordan, but also the sexual molestation of that young girl and the issues associated with that kind of attack.

As a result, counsel made some inquiry and, in fact, a number of jurors volunteered reports of incidents that had [3978] occurred in their lives which related to matters sexual. Problems in their marriages and divorces, problems associated with growing up and sexual experience. A number of the jurors related details of what they believe to be sexual assaults that they had suffered and as Mr. Myers pointed out, a number either they suffered or members of their family or friends suffered. And as Mr. Myers points out, some of the jurors indicated in the course of relating these details that they had not reported them to anyone else or they had not communicated these facts or incidents even to members of their own family. Children, parents and relatives.

There was, throughout the proceeding, Your Honor, I think by the Court's own words and actions, as well as the words and actions of defense counsel an implied promise of confidentiality regarding the subject matter of what was being discussed. Matters went to other areas in which the mental health history of certain jurors were discussed, histories of hospitalization or treatment by a psychiatrist, even a brief encounter with a psychiatrist was brought up, making it plain that there was the implied promise of confidentiality.

Now, a number of jurors, as I recall, at least three balked at a question that I would ask concerning how they voted on a particular issue in a particular election and at least three of the jurors said I thought we had a secret ballot in this country and, indeed, we do. And if this had been certainly a jury selection before this summer, that question would

probably have been subject to an objection by the Court and be disallowed.

[3979] The jurors have certain privileges, certain rights to privacy which they, in the course of their examination here were uninformed and unadvised of because they were promised confidentiality.

No one was here to represent their interests to say to the juror, wait a second, this could be made public at some later date. No one was here to assert any kind of privilege that might exist under the Evidence Code or under case law or that might exist.

They, essentially, were in the box defenseless in answering those question.

For all those reasons, the situation that exists in this courtroom is different than the one that existed prior to the summer of this year in the State of California and although I am not as well versed as, perhaps, Mr. Ward is on the state of the law in other states, I would suggest that at least in my information there are not any other jurisdictions which permit as wide-ranging an examination as is permitted in this state and as was permitted by this Court.

(NO OMISSIONS)

[3980] THE COURT: With respect to the decision in the Smith and Harven case, again I would agree with Mr. Myers concerning the applicability of that decision here, for I have spoken with the Deputy District Attorneys who have handled that case, Mr. Hanks and Mr. Ruddy, and they have indicated to me that the jurors were informed and the Court operated under the assumption that at the end of the proceedings the transcripts might be made available to the public. The issue concerning the sealing of the transcripts was not, to the best of my knowledge, believed or argued in the Court of Appeal.

And that fact alone, your Honor, I would suggest separates and distinguishes that case from the one we have here.

I have some — well, I suppose I would say lack of understanding or appreciation for the reason why the Press would want the kind of examination that was conducted in this courtroom. I don't know what issues they would find interesting outside of the, perhaps, purely prurient ones associated with the personal lives of the individuals, most of whom, as Mr. Myers said, had no choice in the matter. They were drafted. They received the letter from Mr. Mann, the Jury Commissioner, and had come down here and believed they had to answer all of the questions that we gave them.

It is interesting to me to note that the Press was not present except for the first day of jury selection, and during the extended examination of Mr. Myers that went over two days and the examination that I did which went over two days the Press and the person, Mr. Bowman, chose not to be present for those kind of questions which would normally be public.

[3981] It is possible, your Honor, I suppose for someone at sometime to go through that jury examination and excise out those insensitive portions, but certainly, as the Court can appreciate, we have something like 4,000 pages of transcript. And I have no idea when the trial is starting on Monday who would be able to do that and who would make that kind of judgment as to what was privileged and protected and where right to privacy existed and where one didn't.

The other thing I would note to the Court is something that I noted at the time that Mr. Ward laughed here, and that is that, although the voir dire and sequestration of the examinations that occurred in this case was more extensive

than in most cases, it is not entirely unusual. In my experience in this courthouse, if not in this courtroom, in virtually every felony case I have tried, and there have been dozens, I have not had a trial where a juror has indicated a reluctance to answer a question of a personal nature and then the Court has not taken that juror into Chambers and the questioning has gone on in Chambers in-camera.

Judge Schulte — I am not suggesting he is an example, which everyone should follow, but it is his regular practice in his courtroom to indicate with respect to certain questions that if jurors do have personal problems he tells them at the beginning that they should indicate that they wish to speak to the attorneys in Chambers, and that is an automatic process of the voir dire in that particular courtroom.

But certainly in every courtroom there are proceedings that occur in the course of a public trial where counsel ask to [3982] approach the Bench, where counsel ask to discuss a matter in-camera with the Judge. Those matters are handled at that time out of public view and examination and are, for all intents and purposes, secret.

I suppose that someone at some time could go back and examine after the case has gone up on appeal if a transcript was prepared those transcripts, but that, to the best of my knowledge, rarely occurs.

In summation, your Honor, we would ask that the Court's order regarding the sealing of the voir dire examination continue.

Now, Mr. Ward appears to make one other request, a release of all, quote heretofore suppressed court orders concerning evidentiary matters submitted to this Court for rulings by the People. I am not entirely certain what that is referring to, and he is not specific in his request.

There was a court order — well, there was a request by the defense for a sealing of the preliminary hearing transcripts and certain other matters relating to the arrest of the defendant, things of that sort. The defense made the motion, and the Court will recall the motion was denied, and the matter was taken up by the People before the Court of Appeal.

It would be the People's intention, your Honor, and it was the People's intention at that time to prevent public dissemination of the information contained in those proceedings and those documents in order to effectuate the selection of a fair and impartial jury in this County.

Once that jury is sworn next Monday and we begin the [3983] public trial, and jeopardy has attached, it would be the intention to move that the Court unseal all those documents. So the People would have no objection to the release of those public records.

However, we do object to the release of the records associated with the voir dire primarily because we concur with Mr. Myers that there is a right of privacy that belongs to those jurors which we cannot — that is, the District Attorney's office, cannot violate, and we cannot effectively represent those people in these proceedings.

With respect to his request for extended media coverage in the form of apparently a cameraman in the courtroom, we have no objection.

MR. WARD: May I close, your Honor?

THE COURT: Yes.

MR. MYERS: Let me make one statement for the record, and then Mr. Ward can take it, because I didn't turn my attention to that other part of the motion of the Press-Enterprise.

Just so that the Court is aware of the defense position, we would take a different view from Mr. Spitzer and the office of the District Attorney with regard to the evidentiary materials, the motions on suppression, the preliminary hearing transcript, and the like, because we feel that unsealing those items at this time, which may or may not include the evidence that is presented in the public trial, would be very adverse to the interest of my client and could prejudice the jury and alternate jurors in this matter.

[3984] Even though those people have assured us that they will avoid exposing themselves voluntarily to publicity, I can well imagine certain items, certain kinds of evidentiary materials, that this Court would not have itself ruled on that would, by this process of unsealing, be exposed to the public and perhaps published and then perhaps discussed so that one or more jurors might be exposed to them and not able to have that material screened from their view.

So our position would be that we would ask that those orders remain in effect and that those things that were previously sealed remain sealed, at least as far as the evidentiary material until the conclusion of the trial so that there's no danger of the jury, once it is sworn and once jeopardy does attach, committing some sort of misconduct and causing us to have to go into that point, a rather extremely hazardous and difficult road in terms of showing that such misconduct existed.

So far as the request that the Riverside Municipal Court have extended media coverage, I think that that is probably within the Court's discretion to grant so long as it does not interfere with the trial process itself.

THE COURT: Extended coverage?

MR. MYERS: Yes, sir.

THE COURT: I would require the written consent of the defendant and the written consent of the prosecution.

MR. MYERS: Well, let me —

THE COURT: According to the rule.

MR. MYERS: All right. Also, of course, as the Court [3985] is aware, this request was not served on me or Mr. Spitzer until the Court made copies of it for us this morning, and it is addressed to the wrong court, but I will discuss that with Mr. Brown and see what his views are. And if he chooses to provide a consent, we'll do that.

THE COURT: All right.

MR. WARD: May I close, your Honor.

THE COURT: Yes.

MR. WARD: Very briefly, regarding the request for extended coverage, and the Court is aware, I had no previous awareness of that. I had a conversation with the Court. That was done by my client independently, and I am not here particularly arguing that, although, of course, I uphold their position and would hope the Court would grant them the right under the law as the Court sees it.

As to the more important matter to which I have previously addressed myself, the matter of the right of the public to attend this trial, I feel we should get back to basics on that point, and with all due respect to the sincerity of both counsel, both of whom I respect, I think that there is something lacking here in perspective in what we are actually doing.

I do not represent a single newspaper who comes in and has some prurient interest in the transcript of a proceedings and wants to pry into the private lives of individuals. I do not represent a newspaper who simply wants a single transcript of a proceedings.

We may have an aggrandized view of our position, your [3986] Honor, but we believe we are standing for is the right to the public to access to trials. It is our belief that the public has a right to that access and that if they don't have it, that there is a very grave danger of a miscarriage of justice that will effect all of us, and the reason is very simple and it's apparent from what we see here today.

I am almost in the position of saying as little children say, "I told you so," because our position has been that the minute you close down the voir dire proceedings then you are putting yourself to the situation where from that point on, and if you follow the argument of counsel to its logical conclusion, never would the public know what took place in the selection of that jury, this jury who is going to sit here and make the decision in this case, the most important single part of this trial, because the people who are deciding the case have been selected and the prosecutor and the defense counsel now say that all of that is private and that the public should have no right to it.

(No Omissions.)

[3987] If you follow the logic of their reasoning, we might just as well lock that door and never allow people in here. Again, because witnesses are going to be called who are not represented by counsel, who have no choice but to answer the questions and who are asked questions that may be embarrassing to them that do not have counsel representing them are not in an adversary situation, Your Honor, and I submit, Your Honor, that if we logically extend the argument of counsel we are going to close the whole proceedings and I submit, Your Honor, that we are following a track that's going to get us in trouble, that's going to violate very basic rights.

If we believe in the system that we have adhered to for hundreds of years under our system of jurisprudence, that courtrooms are open and public places because in the open light of day with the scrutiny of the whole of the nation looking in at any proceedings at any given moment that that's when the truth comes out and that's when justice is secured.

If we basically believe in that we take away inch by inch the right of the people to have access to those proceedings. And I think that's precisely what's happening here. And in a sense, with all due respect to the sincerity of counsel, I am horrified at what I see here.

Now, one argument is interesting to me. I certainly cannot buy it and Mr. Myers arguing that there is some adverse proceedings for all jurors are in some adversary proceedings with us and they have to have counsel appear, as I say, all of the participants would have to have counsel and to participate in these proceedings. If, indeed, some promise was made to [3988] these jurors that this was totally private and it would never be revealed, then I submit, Your Honor, that an error occurred there and I respectfully submit that because I believe that it was implicit in what we originally sought in the openness of the voir dire proceedings that we would pursue it until such time as we got it.

Now, when — whether we got it at the end of the voir dire, at the start of testimony or at the end of the trial or whenever we got it, it was implicit that we wanted access, we believed that the people, the public, through the media of the press, have the right to access to those proceedings, and I would sorely regret if there was any promise, express or implied, that those jurors were able to answer questions in total secrecy, and I think that would be wrong.

I submit, Your Honor, that if we do this at this point, if our request for access is denied, that we are going to have an exceedingly difficult situation, as I say, I think it's a progressive type of thing where another step will be the closing of the testimony, for instance, on the rationale of the same arguments. And I think that we would see the ultimate breakdown of what we think is so important, which is the right to a free and public trial.

THE COURT: Thank you, Mr. Ward.

The letters of Mr. Myers dated December 16, 1981, is received, ordered filed and made a part of the record.

MR. WARD: Excuse me. I apologize for interrupting, since that has become a part of the record, would it be possible for me to procure a copy of that?

[3989] THE COURT: Yes.

MR. WARD: All right.

THE COURT: And the motion of the Press-Enterprise which has been received by the Court is received, ordered filed.

I don't know if we have any filing fee problems or not.

THE CLERK: I think we have overcome that, Your Honor.

THE COURT: Very good.

It's ordered filed and as part of the record.

The motion to conduct extended media coverage is received and ordered filed and as soon as the People have indicated they would consent and we will leave it up to them and hear what defendant decides after counsel has had an opportunity to interview him.

The defense motion in limine is received and ordered filed as of December the 28th, 1981, we will take up next. But on Mr. Ward's motion on behalf of the Press-Enterprise,

and incidentally the request for extended coverage I deem it to be a clerical error, that it is addressed to this Court and not the Municipal Court, it indicates that I am the Judge, and so I assume it simply was an oversight that it has the Municipal Court name on it.

The motions at this stage of the proceedings is denied without prejudice.

I agree with much of what the defense counsel and People's counsel have said and I also, regardless of the [3990] public's right to know, I also feel that's rather difficult that by a person performing their civic duty as a prospective juror putting their private information as open to the public which I just think there is certain areas that the right to privacy should prevail and a right to a fair trial should prevail and the right of the people to know, I think, should have some limitations and, so, at this stage, the motion to open up anything that's been ordered sealed, including, again, the individual sequestered voir dire proceedings is denied without prejudice.

MR. WARD: Thank you, Your Honor.

THE COURT: Thank you.

MR. MYERS: Thank you.

MR. SPITZER: Thank you, Your Honor.

THE COURT: We will take up, I will advise counsel of one thing that I presume we will probably have to take up when Mr. Reiss is available, Alternate Number 2, Mr. Brian Reiss called in several days ago, last week sometime. He has a new job that they want him to commence on January the 18th so he is requesting to be excused.

I have just made a note of it and we will take it up when he is available and act on it as might be appropriate.

Now, we will proceed to the motion in limine.

The motion in limine seems to relate to all proffered testimony of the Department of Justice, to-wit, Faye Springer, regarding comparison of footprints. Testimony of the Department of Justice, including Faye Springer, relating to circumstantial evidence of blood or semen types. . . .